

## Federal Emergency Management Agency

### Federal Insurance Administration

## MANDATORY PURCHASE OF FLOOD INSURANCE GUIDELINES

**Agency:** Federal Emergency Management  
Agency, Federal Insurance Administration

**Action:** Revision of Guidelines

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Reform Act) substantially amended the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act tightened the mandatory purchase provisions that originated with the Flood Disaster Protection Act of 1973. Specifically, the Reform Act imposed significant new obligations on lenders and their servicers.

Because of the Reform Act's continuing impact upon lenders, the Federal Insurance Administration has updated and reformatted the guidelines, which were previously issued in October 1989 and in May 1997.

Implementing the mandatory flood insurance purchase requirements of the Reform Act is the responsibility of the various Federal Agencies that oversee lenders, not the Federal Insurance Administration. However, Section 4128(b) of 42 U.S.C. provides that Federal Agencies and Instrumentalities shall, in cooperation with the Director of the Federal Emergency Management Agency, issue appropriate rules and regulations to govern the responsibilities under the Reform Act.

These guidelines present an overview of the 1994 Reform Act as it amended the 1973 Act. They are intended to explain the applicable statutes or regulations. The guidelines are divided into five sections:

- A. Introduction
- B. Coverage Availability
- C. General Mandatory Purchase Provisions
- D. Condominiums, Cooperatives, and Timeshares
- E. Key Provisions

Several appendices are presented that contain the relevant statutes and regulations addressed in these guidelines as well as specific supplementary information referenced in the document. Users of these appendices should ensure they are using the most current versions, as they are subject to change annually. The guidelines also include process flowcharts, a glossary, and an index.

All statutory references in the guidelines are to the United States Code. The National Flood Insurance Act statute can be found in 42 U.S.C. 4001 et. seq. The regulations that address the NFIP are published in 44 CFR Part 59. The joint regulations promulgated by the lending regulators, issued on August 29, 1996, are found in Vol. 61, Federal Register, No. 169, p. 45683. The full text of each lending regulator's regulations can be found in the regulatory agencies' relevant section of Title 12 of the Code of Federal Regulations.

These guidelines are intended to supplement, not replace, a review of the applicable statutes and regulations, and are not intended to provide legal guidance. They will not provide answers to every question that may arise in conjunction with placing

## **Mandatory Purchase of Flood Insurance Guidelines**

---

a secured loan on property located in a Special Flood Hazard Area. However, a careful reading of the guidelines will help a lender recognize relevant issues as they arise.

Specific questions should be referred to the appropriate source listed in Appendix 5, NFIP Resources.

TABLE OF CONTENTS

	<u>PAGE</u>
LIST OF ABBREVIATIONS, ACRONYMS, AND INITIALISMS .....	ix
PROCESS FLOWCHARTS - The Mandatory Purchase of Flood Insurance Requirement .....	xi
A. INTRODUCTION .....	1
1. Brief Description of the National Flood Insurance Program .....	1
2. The Mandatory Flood Insurance Purchase Requirement .....	2
a. Flood Disaster Protection Act of 1973 .....	2
b. National Flood Insurance Reform Act of 1994 .....	3
B. COVERAGE AVAILABILITY .....	5
1. Participating Communities .....	5
a. Community Ordinances .....	5
b. Studies and Maps .....	6
c. Map Issues .....	7
(1) Letters of Map Amendment .....	8
(2) Letters of Map Revision .....	8
(3) Community-Initiated Map Revisions .....	9
(4) Map Availability .....	9
d. Determining Location of a Building .....	10
(1) Significance of Building's Location .....	10
(2) Responsibility in Determining a Building's Location .....	10
(3) Flood Determination Fee Charged by Lender .....	11
e. FEMA's Review of Determinations .....	13
(1) Statutory Review .....	13
(2) Administrative Review .....	15

## **Mandatory Purchase of Flood Insurance Guidelines**

---

### TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
2. Nonparticipating Communities and Restricted Coverage Areas.....	16
a. Regulated Lending Permitted .....	16
b. Federal Financial Assistance and Disaster Assistance Limited .....	17
c. Notification of the Unavailability of Disaster Assistance .....	17
d. Buildings Ineligible For NFIP Coverage.....	18
(1) Underwriting Restrictions .....	18
(2) Coastal Barrier Resources Act.....	18
(3) Buildings in Violation of State or Local Laws .....	18
C. GENERAL MANDATORY PURCHASE PROVISIONS.....	19
1. Entities Encompassed by the Act.....	19
a. Federally Regulated Lenders .....	20
b. Government-Sponsored Enterprises .....	21
c. Federal Agency Lenders .....	22
2. Specific Provisions of the Act.....	22
a. Limits Available.....	22
(1) Land Not Insurable .....	23
(2) Calculating Coverage.....	23
(3) Deductible.....	24
(4) No Coverage if Land Loan Only.....	25
(5) Low-Value Building on High-Value Land .....	25
(6) Buildings in the Course of Construction.....	25
(7) Mobile Homes .....	26
(8) Personal Property.....	27
b. Underinsured Buildings.....	27
c. Home Equity and Second Mortgages .....	27

TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
d. Notification Requirements .....	29
(1) Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance .....	29
(2) Notification of Change of Servicer .....	30
(3) Expiration Notice .....	32
e. Standard Flood Hazard Determination Form.....	32
(1) Determination Process.....	32
(2) Instructions for Using the SFHDF .....	33
f. Waiting Period and Exceptions .....	34
(1) Coverage Obtained in Conjunction With a Loan.....	34
(2) Assignment of Policy .....	34
g. Escrow Requirements.....	35
(1) Real Estate Settlement Procedures Act .....	35
(2) Applicability.....	36
(3) Escrow Exclusions.....	37
h. Force Placement .....	37
(1) Authority.....	37
(2) Applicability.....	38
(3) MPPP Method of Placement .....	39
(4) Standard NFIP Policy .....	39
(5) Private Flood Insurance.....	40
i. Exceptions .....	40
(1) State-Owned Property .....	40
(2) Small Loan.....	40
D. CONDOMINIUMS, COOPERATIVES, AND TIMESHARES .....	40
1. Condominium Associations .....	40

## **Mandatory Purchase of Flood Insurance Guidelines**

---

### TABLE OF CONTENTS (Continued)

	<u>PAGE</u>
a. Residential Condominium Building Association Policy (RCBAP) .....	41
(1) Evidence of Compliance .....	41
(2) Coverage .....	42
(3) Policy Limits.....	42
(4) Coinsurance Provision.....	42
b. Dwelling Policy .....	42
c. General Property Policy .....	43
2. Cooperative Associations.....	43
3. Timeshares .....	43
4. Secondary Market.....	44
a. Fannie Mae .....	44
b. Freddie Mac.....	44
E. KEY PROVISIONS.....	44
1. Tripwires .....	44
a. Loan Activity .....	44
b. Loan Transfer or Purchase .....	44
c. Portfolio Review .....	45
2. Safety and Soundness .....	46
3. Table Funding .....	46
4. Impact on Servicers .....	47
5. Private Flood Insurance .....	48
6. Regulatory Overview .....	49
a. Regulatory Examinations.....	49
b. Regulatory Penalties.....	50
7. Civil Liability.....	50

TABLE OF CONTENTS (Continued)

Appendix 1 - Legal References

Appendix 2 - Lender Regulations

Appendix 3 - Statutory Provisions

Appendix 4 - Notice Requirements

Appendix 5 - NFIP Resources

Appendix 6 - Standard Flood Hazard Determination Form

Appendix 7 - GSE Guides

Appendix 8 - Waiting Period Policy Issuance

Appendix 9 - MPPP Guidelines

Appendix 10 - Cooperatives and Timeshares Policy Issuance

Appendix 11 - Private Flood Insurance Criteria

Appendix 12 - FFIEC Examination Objectives and Procedures

Glossary

Index

(This page intentionally left blank.)



## **Federal Emergency Management Agency**

---

### LIST OF ABBREVIATIONS, ACRONYMS, AND INITIALISMS

1968 Act	National Flood Insurance Act of 1968 (NFIA)
1973 Act	Flood Disaster Protection Act of 1973 (FDPA)
1982 Act	Coastal Barrier Resources Act of 1982 (CBRA)
1994 Reform Act	National Flood Insurance Reform Act of 1994 (NFIRA)
BFE	Base Flood Elevation
CBRA	Coastal Barrier Resources Act of 1982
CFR	Code of Federal Regulations
CRS	Community Rating System
Fannie Mae	Federal National Mortgage Association
FCA	Farm Credit Administration
FDIC	Federal Deposit Insurance Corporation
FDPA	Flood Disaster Protection Act of 1973
FEMA	Federal Emergency Management Agency
FFIEC	Federal Financial Institutions Examination Council
FHA	Federal Housing Administration
FHBM	Flood Hazard Boundary Map
FIA	Federal Insurance Administration
FIRM	Flood Insurance Rate Map
Freddie Mac	Federal Home Loan Mortgage Corporation
FZD	Flood Zone Determination
Ginnie Mae	Government National Mortgage Association
GPP	General Property Policy
GSE	Government-Sponsored Enterprise for Housing
H.R.	House of Representatives
HUD	Department of Housing and Urban Development
ICC	Increased Cost of Compliance
LODR	Letter of Determination Review
LOMA	Letter of Map Amendment
LOMR	Letter of Map Revision
LOMR-F	Letter of Map Revision Based on Fill
MPPP	Mortgage Portfolio Protection Program

### LIST OF ABBREVIATIONS, ACRONYMS, AND INITIALISMS (Continued)

NCUA	National Credit Union Administration
NFIA	National Flood Insurance Act of 1968
NFIP	National Flood Insurance Program
NFIRA	National Flood Insurance Reform Act of 1994
OCC	Office of the Comptroller of the Currency
OTS	Office of Thrift Supervision
PRP	Preferred Risk Policy
RCBAP	Residential Condominium Building Association Policy
RESPA	Real Estate Settlement Procedures Act of 1974
SBA	Small Business Administration
SFHA	Special Flood Hazard Area
SFHDF	Standard Flood Hazard Determination Form
SFIP	Standard Flood Insurance Policy
U.S.C.	United States Code
VA	Department of Veterans Affairs
WYO	Write Your Own

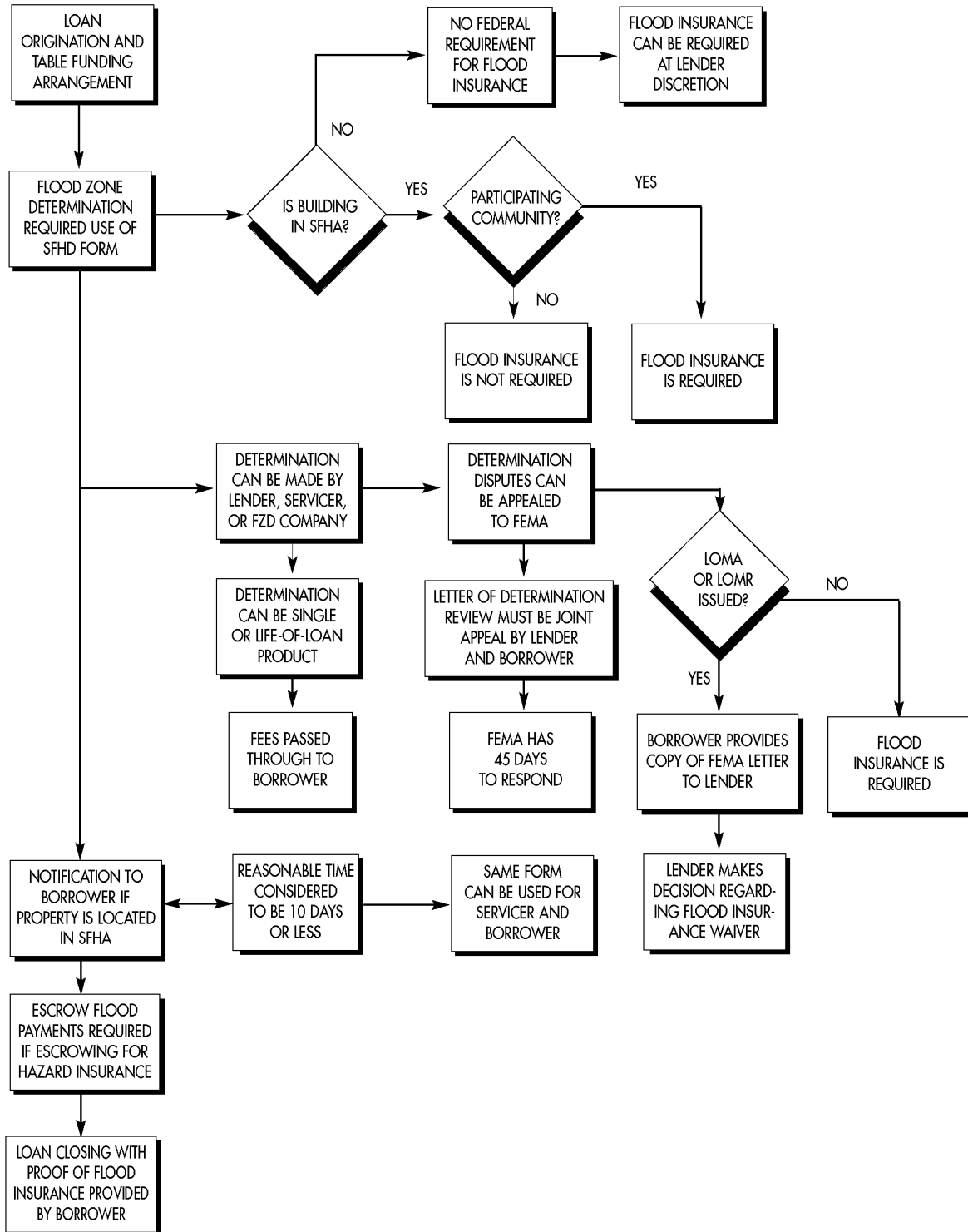
**PROCESS FLOWCHARTS —**

**THE MANDATORY PURCHASE OF**

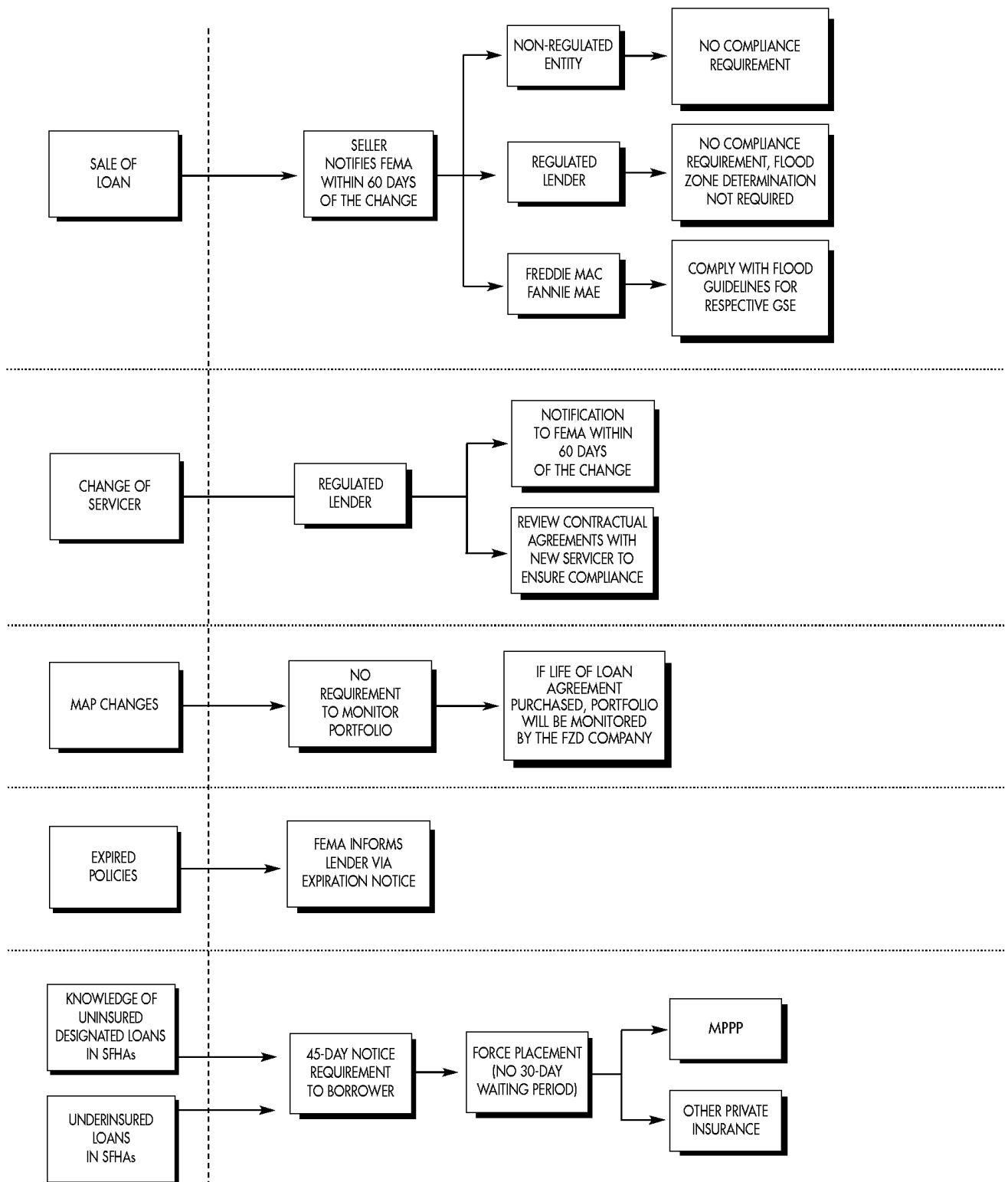
**FLOOD INSURANCE REQUIREMENT**

# MANDATORY PURCHASE AT LOAN ORIGINATION

(Making, increasing, renewing, or extending a loan)



## TRIGGER POINTS DURING LIFE OF LOAN



### A. INTRODUCTION

The 1994 National Flood Insurance Reform Act (the 1994 Reform Act) is part of Title V of the Riegle Community Development and Regulatory Improvement Act of 1994 and amended 42 U.S.C. §4001 et seq. The 1994 Reform Act imposes significant new obligations on lenders and servicers and tightens the requirements on the receipt of disaster assistance.

#### 1. Brief Description of the National Flood Insurance Program

Prior to 1968, the Federal Government attempted to control coastal and riverine flooding on a national scale through re-channeling, using dams and levees to restrict the flow of waters, as well as through development of hydroelectric power and irrigation. But the increasing costs of these projects and high annual totals of flood-related damage influenced the Government to explore the possibility of decreasing disaster relief payments through flood insurance.

In spite of all these actions, vast sums of money continued to be expended through the response mechanism of Federal disaster assistance. From the standpoint of the Federal Government, the question to be decided was through which mechanism Federal funds would be made available most effectively after a flood, i.e., disaster assistance or flood insurance payments.

In 1968, flood insurance coverage was virtually unavailable in the private sector. The private insurance industry was then, and remains now, largely unwilling to underwrite and bear the risk of flood because of its catastrophic nature. Consequently, Congress decided to provide coverage through a Federal flood insurance

program to help reduce the costs of expensive disaster relief payments.

Through the National Flood Insurance Act of 1968, Congress authorized the National Flood Insurance Program (NFIP), which provided an opportunity for property owners to purchase flood insurance protection made available by the Federal Government for structures and contents. The NFIP combines the concepts of insurance protection and hazard mitigation. This Program provides an incentive for communities to adopt floodplain management ordinances to mitigate the effects of flooding upon new or existing construction. (Citations referring to the statutory authority of the Program can be found in Appendix 1.)

The 1968 Act made federally subsidized flood insurance available to owners of improved real estate or mobile homes located in a floodplain if their community participated in the NFIP. The Act defines improved real estate as real estate upon which a building is located. Under the NFIP, this means a walled and roofed building or a building in the course of construction that qualifies for insurance coverage. The term "improved real estate," as used throughout these guidelines, includes mobile homes, unless otherwise stated.

A community establishes its eligibility to participate in the NFIP in two ways:

- By adopting and enforcing floodplain management measures to regulate new construction, and
- By ensuring that substantial improvements to existing buildings within identified Special Flood Hazard Areas (SFHAs) are designed to eliminate or minimize future flood damage.

## Mandatory Purchase of Flood Insurance Guidelines

An SFHA is an area within a floodplain having a 1 percent or greater chance of flood occurrence in any given year. SFHAs are delineated on flood maps issued by the Federal Emergency Management Agency (FEMA) for individual communities. These flood zones are represented on the flood maps by the darkly shaded areas with zone designations that include the letter A or V.

Federal flood insurance was initially available only through insurance agents who dealt directly with the Federal Insurance Administration (FIA). This "direct" policy program has been supplemented since 1983 with a program known as "Write Your Own (WYO)," through which more than 100 insurance companies, based on an arrangement with the FIA, issue policies and adjust flood claims under their own names. The insurers receive an expense

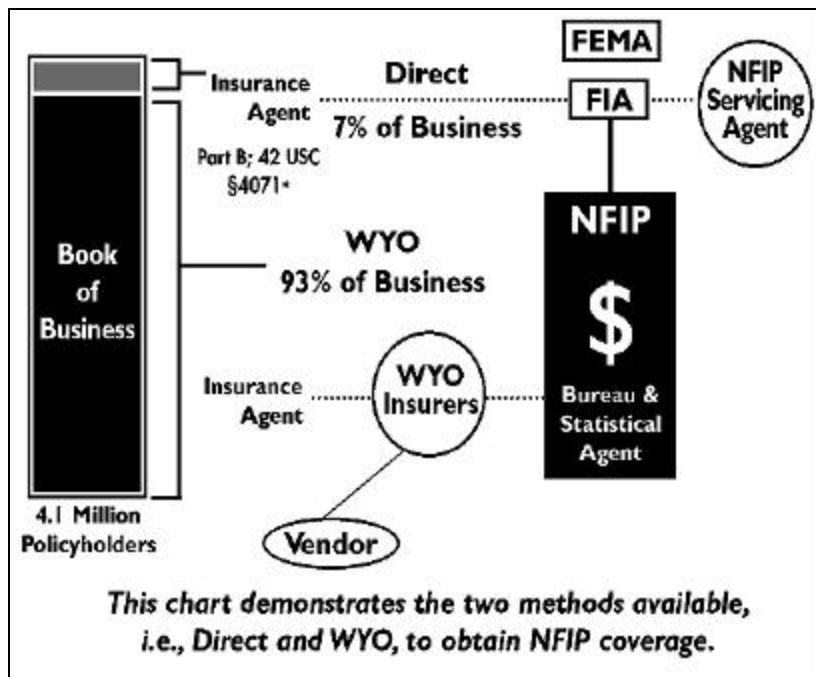
Federal Government through the direct program.

### 2. The Mandatory Flood Insurance Purchase Requirement

#### a. Flood Disaster Protection Act of 1973

From 1968 until the adoption of the Flood Disaster Protection Act of 1973, the purchase of flood insurance was voluntary. Property owners could make their own decisions whether to purchase flood insurance. However, the 1973 Act mandated flood insurance coverage for many properties. For the first time, regulated lending institutions could not make, increase, extend, or renew any loan secured by improved real estate or located in an SFHA in a participating community unless the secured building and any personal property securing the

loan were covered for the life of the loan by flood insurance. This measure was necessary because, after major flooding disasters, it became evident that relatively few individuals in eligible communities who sustained flood damage had purchased flood insurance. An eligible community is a political subdivision with the authority to enact regulations in identified SFHAs. Although nearly all the eligible communities are now in the Program, fewer than 25 percent of the eligible buildings are actually covered



allowance and remit premium income in excess of claims to the Federal Government. The FIA pays losses in excess of premiums and sets the rates, coverage limitations, and eligibility requirements. The premium charged for NFIP flood coverage by a WYO Company is the same as that charged by the

by flood insurance policies. Market penetration is highly variable from community to community. As shown by past disasters, coverage has been lower than 10 percent in some communities and as high as 75 percent in certain coastal communities.

Overall, history has proven that voluntary participation, as well as a mandatory program with weak sanctions, yields too few subscribers.

### **b. National Flood Insurance Reform Act of 1994**

Following the multi-billion dollar flood damage in the Midwest during the summer of 1993, Congress revisited the mandatory purchase law and enacted the 1994 Reform Act. The reasons for the Reform Act included the NFIP's low reserves, resulting from a series of storms, as well as a low level of participation among eligible property owners. At that time, it was estimated that slightly more than 2 million of the 10 million households in SFHAs were covered by flood insurance. This low level of coverage persisted for various reasons, including the following:

- Some homeowners believed that they simply could not afford the cost of flood insurance in addition to mortgage payments and homeowners' insurance.
- Federally regulated lending institutions often were relaxed in complying with the mandatory purchase provision without the sanction of a penalty.
- Homeowners who purchased flood insurance at the origination of their mortgages often allowed their policies to lapse.

A combination of these factors led to a low percentage of eligible homeowners purchasing flood insurance and kept disaster relief payments high. Congress recognized that the proper response was to bring more property owners into the Program by creating more inducements to purchase coverage.

Congressional activity culminated with the passage of H.R. 3474, which was enacted as 103 P.L. 325, Title V, 108 Stat. 2160, 2255-87 (Sept. 23, 1994), generally referred to as the 1994 Reform Act. The Conference Committee's report that accompanies the legislation at H.R. Conf. Rep. No. 652, 103rd Cong. 2d Sess. 195 (1994) (Conference Report) describes the reasons for the amendments to the Act.

As stated in the report, the legislation contains important reforms to improve the financial condition of the NFIP. A primary purpose of the legislation is to improve compliance with the mandatory purchase requirements of the NFIP by lenders, servicers, and secondary-market purchasers. Improved program compliance will increase participation nationwide by those individuals who have mortgaged homes or businesses in SFHAs, but have not purchased or maintained flood insurance coverage. Increasing compliance and participation in the NFIP is also designed to provide additional income to the insurance fund and decrease the financial impact of flooding to the Federal Government, to taxpayers, and to citizens in areas prone to flooding.

The law requires Federal agency lender regulators to develop regulations to direct their federally regulated lenders not to make, increase, extend, or renew any loan on applicable property unless flood insurance is purchased. The proposed regulations were jointly issued in the October 18, 1995, Federal Register at Vol. 60, No. 201, p.53962; the final regulations appeared in the August 29, 1996, Federal Register at Vol. 61, No. 169, p.45683. A version of the regulations is attached as Appendix 2. Most of the final regulations have an effective date of October 1, 1996. Exceptions are the implementation of the Farm Credit Administration regulations, with an



effective date of October 4, 1996, and the National Credit Union Administration regulations, with an effective date of November 1, 1996.

In response to numerous requests for additional information, the agencies will issue informal guidance to address technical issues after the promulgation of the joint final regulations.

The centerpiece of the mandatory purchase requirements is found in the statute at 42 U.S.C. §4012a(b) (see Appendix 3). Certain notice requirements that complement these substantive requirements are found at 42 U.S.C. §4104a and §4104b (see Appendix 4). These sections address the responsibility of regulated lending institutions and Government-Sponsored Enterprises (GSEs) in providing notice of and requiring flood insurance coverage for the term of the loan on buildings located in any SFHA in participating communities.

The 1994 Reform Act significantly tightens the 1973 Act by imposing important new obligations on both mortgage originators and servicers, including mandatory escrow requirements for flood insurance and mandatory provisions for "forced placement" of flood insurance.

Although the intent of the statute is to require borrowers to purchase flood insurance, the 1994 Reform Act's directives and prohibitions are directed to federally regulated primary lenders and to secondary market entities involved in mortgage loan transactions. The flood insurance requirements do not apply to lenders or servicers that are not federally regulated and that do not sell loans to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) or other GSEs. The 1994 Reform Act indirectly impacts

regulated and unregulated lender security, because borrowers who have received certain disaster assistance and then fail to obtain and maintain flood insurance coverage are barred from receiving future disaster assistance.

The 1994 Reform Act makes it clear that the requirement to purchase flood insurance is not to be waived for those recipients of Federal disaster assistance who continue to remain uninsured, thereby increasing the chances they will need Federal disaster assistance again. Removing the availability of disaster assistance thus encourages individuals to purchase flood insurance rather than have no funds available when a loss occurs. Disaster assistance for temporary housing and for purposes other than repairing or rebuilding buildings is not affected by this new provision.

A key clarification of the 1994 Reform Act is that flood insurance must be obtained and maintained during the term of the loan. This provision also applies to Fannie Mae and Freddie Mac on any "covered loan" they buy. Flood insurance will be required even if the SFHA designation is first identified after settlement, but during the term of the loan. This requirement is designed to combat coverage lapses allowed to occur by individuals who believe they will not be flooded, and therefore discontinue payment of flood insurance premiums during the term of the loan.

It is a prerequisite that a designated loan have flood insurance as a condition of closing. If a borrower will not voluntarily obtain coverage and a lender is unable to force placement coverage, the lender must deny the loan or exercise the sanction provisions of the loan document if the loan already has been made. A lender cannot accept a borrower's assurance that he or she will obtain coverage in the future or grant the lender indemnity while seeking coverage.

Closing a designated loan without coverage in place constitutes a violation of the regulation.

The 1994 Reform Act is designed to strengthen compliance with mandatory purchase requirements. The Act is applicable when a lien is taken as security for a loan transaction on improved real estate (a building) or a mobile home. Under the new law, lenders' responsibilities include the following actions:

- Determine whether the building offered as security for a loan is, or will be, located in an SFHA;
- Document the determination of flood hazard status;
- Require that flood insurance to the appropriate limit is obtained when necessary; and
- During the term of the loan, ensure that flood insurance is maintained or added if the lender becomes aware that the building involved subsequently becomes part of an SFHA.

While the mandatory purchase requirement applies only to buildings located in SFHAs of participating communities, NFIP flood insurance is available in all areas of participating communities. This is especially significant because, historically, about 25 percent of the NFIP claims paid have actually been outside of SFHAs. Lenders and property owners may wish to exercise additional caution in areas subject to flooding due to storm water, in areas where the NFIP has used approximate methods to map SFHAs, or in remote locations where no SFHAs have been designated by FEMA. In January 1989, to facilitate the purchase of flood insurance outside of SFHAs, the NFIP began

offering a low-cost "preferred risk" policy for buildings located in Zones B, C, and X.

Some buildings in a participating community may be ineligible for flood insurance because of statutory restrictions or NFIP underwriting rules. See Section B.2.d for a discussion of the unavailability of flood insurance in such instances.

The 1994 Reform Act's mandatory purchase requirement applies to all federally backed loans outstanding on or after the date of the Act's enactment, September 23, 1994. The Conference Committee, in its report on the Act, states its view that the making, increasing, extending, or renewing of a loan serves as a "tripwire" of sorts for compliance with the flood insurance purchase requirements. In the modern mortgage marketplace, this approach makes compliance by lenders increasingly more likely, as borrowers obtain new loans on existing buildings or refinance existing loans. At each designated "tripwire" in the mortgage process, the legislative intent is for a lender or servicer to ensure that flood insurance is purchased and maintained.

A requirement for flood insurance on secured property that is not subject to the Federal flood insurance statutes is a matter of contract between the lender and borrower.

## **B. COVERAGE AVAILABILITY**

### **1. Participating Communities**

#### **a. Community Ordinances**

FEMA conducts Flood Insurance Studies throughout the United States, in cooperation with community officials, to determine the location of Special Flood Hazard Areas (SFHAs) in each community. Based on these studies, FEMA issues Flood Hazard Boundary

Maps (FHBMs) or Flood Insurance Rate Maps (FIRMs) showing the location of these areas and notifies each community of the determination.

Following notification from FEMA that flood hazards exist, if a community decides to participate in the NFIP, it enters into an agreement with FEMA. Under this agreement, the community adopts and enforces ordinances designed to reduce the risk of buildings in that community being damaged by flooding. These ordinances restrict development or limit imprudent building within designated flood hazard areas. In exchange, NFIP flood insurance becomes available for most residential and commercial buildings in the community.

The community's floodplain management ordinances must require building permits for all development within the SFHA. New and substantially improved residential buildings must be constructed with the lowest floor at or above the base flood elevation (BFE), if shown on the FIRM. Nonresidential buildings can be either elevated or floodproofed (made watertight) to that elevation.

Participating communities that fail to adequately enforce their floodplain management ordinances may be placed on probation if they do not take corrective actions within a specified time. NFIP policyholders in that community will be notified that probation is pending and that their policies may become subject to a surcharge on their flood insurance premiums. If a community fails to bring its floodplain management program into compliance with the NFIP requirements, it may be suspended from the NFIP, which would terminate its status as a participating community. In that event, NFIP policies would not be renewed for property owners in that community, no new policies would be issued,

and Federal disaster assistance would be limited.

Most suspended communities quickly enforce the ordinances and become participating again. The success of the NFIP's growth can be credited in part to the incentive that promotes the receipt of Federal benefits contingent upon the implementation of land use controls at the local level.

The NFIP also has special provisions for those communities whose floodplain management activities go beyond the minimum required by law. The Community Rating System (CRS), codified in the 1994 Reform Act, provides incentives in the form of reduced insurance premiums to communities that voluntarily adopt and enforce measures exceeding current program criteria to reduce the risk of flood damage.

### **b. Studies and Maps**

More than 19,000 communities susceptible to flooding have been identified through the publication of flood maps by FEMA. Over 95 percent of these communities participate in the NFIP. Property owners throughout the participating communities are eligible to purchase the maximum amount of flood insurance available under the NFIP to protect buildings located anywhere within such communities, both inside and outside of SFHAs (subject to other restrictions discussed below). Relatively few communities with the potential for flooding do not presently participate. A small percentage of communities are currently "suspended" from the program.

A few participating communities remain in the Emergency Program phase, where only limited amounts of insurance are available. The applicable map for these communities is the FHBM. Once a FIRM has been developed and

issued, it replaces the FHBM. At that time, these communities are eligible for conversion to the Regular Program phase and, therefore, eligible for the maximum amounts of insurance coverage available under the NFIP.

The official FIRM for a Regular Program community delineates the SFHAs and the applicable flood insurance risk zones. SFHAs are those areas within the floodplain that have a 1-percent chance of being flooded in any given year (base flood). Over a 30-year period (the life of most mortgages), there is at least a 26-percent chance that property within an identified SFHA will be flooded.

SFHAs are represented on FIRMs by darkly shaded areas designated with the letter A or V. FEMA uses engineering studies to determine the delineation of these areas. SFHAs are defined in the regulations at 44 CFR §59.1 as Zones A, AO, A1-A30, AE, AR, AR/AO, AR/A1-A30, AR/AE, AR/AH, AR/A99, A99, AH, VO, V1-V30, VE, V, M, or E. The A-lettered areas are susceptible to flooding, while the V-lettered areas are also subject to wave velocity associated with storm waves or wave action. Older FIRMs show numbered A Zones (e.g., A1, A2, A30) and numbered V Zones (e.g., V1, V2, V30) in lieu of the newer AE and VE Zones. Zone M designates mudslide (i.e., mudflow) hazards, and Zone E designates erosion-prone areas. However, Zones M and E do not appear on the FIRMs. Buildings located in the temporarily designated flood restoration zone (Zone AR) are subject to the mandatory purchase requirement.

The term SFHA does not include areas outside the base flood area. Older maps use Zones B and C to represent areas of moderate and low flood risk. Newer maps have replaced these designations with Zone X (shaded) and Zone X

(unshaded), respectively. Areas for which FEMA has made no flood hazard evaluation, but for which flooding is considered possible, are designated as Zone D.

Finally, certain communities with no SFHAs indicated do not have published maps, and the entire area is considered to be in Zone X (unshaded). Although these areas may not be subject to the base flood, local drainage problems may cause damage to certain buildings. If a lender extends a loan in an unmapped participating community and has reason to believe there is a possibility of flood loss to the secured building, then safety and soundness dictate that flood insurance coverage should be in place.

For buildings located outside the SFHAs, the 1994 Reform Act does not require lenders to impose the flood insurance purchase requirement. However, in accordance with most mortgage documents' hazard insurance provision, a mortgage lender is free to require a borrower to carry flood insurance, even if the building serving as security for a loan is located outside an SFHA. Flood insurance is available for all eligible buildings in participating communities, whether inside or outside an SFHA.

### **c. Map Issues**

Map issues arise frequently, since the location of a building with respect to an SFHA is central to determining the applicability of the mandatory purchase provision, as well as the insurance premium rate. In theory, the area on a map in which a building is located should reflect its susceptibility to flood; yet, in practice, FHBM and FIRMs cannot reflect every nuance in the physical geography of an area. This section will review some of the most frequently encountered map issues, including:

- Letters of Map Amendment (LOMAs)
- Letters of Map Revision (LOMRs)
- Community-Initiated Map Revisions
- Map Availability

### **(1) Letters of Map Amendment**

Occasionally, a flood map will show property as clearly being in an SFHA, even though the building on the property is actually above the BFE. In practice, FHBMs and FIRMs cannot possibly reflect every rise in terrain, and there will be instances of "natural islands" of high ground that are inadvertently included in the SFHAs. Nevertheless, until the map is physically revised, lenders are bound by the information shown on FEMA maps unless a valid Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) has been issued by FEMA for the property. Lenders may not close a loan based on a guarantee, or indemnification from a flood vendor or other third party, as a substitute for a LOMA or LOMR.

However, a mechanism is available for resolving such a situation. A property owner can submit property and elevation materials in support of a request for a LOMA removing the property from the SFHA. This process involves the property owner and FEMA.

### **(2) Letters of Map Revision**

A different, but related, situation is presented when a property owner, whose land is within an SFHA below the BFE, grades and fills the site to raise the level of the land above the BFE. In the LOMA situation described previously, the natural level of the land at the time the map was issued was above the BFE, and no artificial improvement was

needed to accomplish that level. In cases where physical changes were necessary to raise the structure above the BFE, FEMA will not issue a LOMA. However, with the community's concurrence, FEMA will issue a Letter of Map Revision Based on Fill (LOMR-F) that, for the purposes of the property owner, will accomplish the same objective. A LOMR-F also can be used to correct a mistake made in the original analysis or to reflect changed conditions, such as the construction or removal of a dam or other flood control structure.

The request for a LOMR must be initiated or approved by the community. Changes in land level may impact other property owners. Submission of a request for a LOMR by the community also confirms that the community has reviewed the change in land level and found it compatible with the community's planning. LOMRs also may be granted in situations where channels have been dug or reservoirs built to reduce BFEs and where levees or floodwalls have been constructed to protect areas. In regulatory floodways, which include the channel of a river and the adjacent floodplain that must be kept unobstructed, the placing of fill or other development is not allowed if it will result in any increase in the flood level for the SFHA.

A unique situation arises when a building is initially constructed at a level below the BFE in an SFHA, and its lowest floor is subsequently elevated or raised above the BFE by supporting walls or pilings. Such a structure is then considered an elevated building by the NFIP.

In this situation, there is no basis for the issuance of either a LOMA or LOMR. The building is still in the designated SFHA, and its foundation can come into direct contact

with floodwaters. When an owner of property below the base flood level elevates a building so that the lowest floor is above the base flood level, the flood insurance purchase requirement continues to apply. Insurance is required because the foundation on which the house is elevated is still below the BFE in the SFHA, where it remains exposed to the action of floodwaters. However, because of its reduced exposure to damage, the newly elevated building will be subject to a lower insurance rate and premium.

Only FEMA can amend an official flood map to remove the location of an insurable building from an SFHA, add it to a designated SFHA, change the SFHA boundary or flood insurance risk zone designation, or modify the BFEs on a map. Until a property owner has received a LOMA or LOMR removing the building from the SFHA, the information shown on the effective FHBM or FIRM must be used. Questions concerning the correctness of the map or the proper zone designation of a building's location in accordance with a LOMA or LOMR are matters beyond the authority of the lender.

After obtaining a LOMA or LOMR, the property owner may submit the letter to the lender, requesting a waiver. However, even though lenders are not required to compel the purchase of flood insurance on buildings removed from the SFHA by a LOMA or LOMR, they have the discretionary right to continue to require flood insurance in accordance with their lending documents. Many floods occur outside of designated SFHAs, and nearly 25 percent of flood insurance claims are for buildings located in these low-risk areas. For this reason, owners who are considering seeking a

LOMA or LOMR should first consult their lending institutions to determine if flood insurance will still be required. Further, lenders are encouraged to advise LOMA and LOMR recipients that floods more severe than the base flood do occur and that they should consider purchasing a Preferred Risk Policy.

### **(3) Community-Initiated Map Revisions**

A physical map revision is an official republication of a map to effect changes to flood insurance risk zones, floodplain and floodway boundary delineations, flood elevations, and other mapping and boundary features within a community. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or corrections of BFEs or flood insurance risk zones. In accordance with the 1994 Reform Act, the Director of FEMA is required to assess the need to update floodplain areas and flood risk zones every 5 years. A notice of any change in BFEs on flood map panels will be published in the Federal Register and in local newspapers.

### **(4) Map Availability**

Under the 1994 Reform Act, FEMA has specific responsibilities for making flood map information available, including the following:

- FEMA must make FIRMs, FHBM, and related information dealing with the various changes discussed above available free of charge to the Federal entities for lending regulation (Federal lenders and certain other governmental entities), and at a reasonable cost to all other persons. The maps and other NFIP publications are available through

FEMA's Map Service Center, which can be contacted on 1-800-358-9616. (See Appendix 5 for additional resources.)

- FEMA also must provide notice of any change to flood insurance map panels, including changes effected by LOMA or LOMR, not later than 30 days after the map change or revision becomes effective. FEMA must either publish this notice in the Federal Register or provide notice by another comparable method.
- Finally, every 6 months, FEMA must publish a compendium of all changes to FIRM panels, all new FIRM panels, and all LOMAs and LOMRs published during the preceding 6 months. The compendium will show the various changes in which some areas are removed from the SFHA while others are included. This compendium is made part of the public record as published in the Federal Register. A lender should review its loans located within the geographic area(s) impacted by the changes noted in the compendium. If a lender becomes aware that any buildings on which it has loans are brought within an SFHA, the mandatory purchase requirements must be met.

### **d. Determining Location of a Building**

#### **(1) Significance of Building's Location**

As stated earlier, the mandatory flood insurance purchase requirements of the 1994 Reform Act apply only where there is a loan extended on improved real property (i.e., a building or mobile home) that is located in an SFHA in a participating community. The

requirement is accomplished by completing the Standard Flood Hazard Determination Form (SFHDF) as discussed in Section C.2.e of these guidelines. If the building or mobile home is located in a participating community, but not in an SFHA, flood insurance is not required, but is available and encouraged.

Even though a portion of real property on which a building is located may lie within an SFHA, the purchase and notice requirements of the 1994 Reform Act do not apply unless the building itself, or some part of the building, is in the SFHA. However, even though that part of the building within the SFHA is not subject to coverage (e.g., a deck) the entire building is considered to be in the SFHA.

Lenders, on their own initiative, may require the purchase of flood insurance even if a building is located outside an SFHA. A decision to require coverage under such circumstances is not compelled by the statute, but is founded on the contractual relationship between the parties. Lenders have the prerogative to require flood insurance to protect their investments, provided that they have reserved that option in their mortgage loan document.

#### **(2) Responsibility in Determining a Building's Location**

The 1994 Reform Act sets the ultimate responsibility to place flood insurance on the applicable lender, yet allows for limited reliance on third parties to the extent the information they provide is guaranteed. The lender, servicer, or a third-party vendor may conduct the determination. Under any alternative, the lender, using such evidence as is reasonable, must take the responsibility

for making determinations and redeterminations. A financial institution cannot rely on the statements of a borrower that the structure in question is either inside or outside an SFHA.

Lenders may reasonably seek assistance from third parties that have demonstrated their knowledge concerning flood map information. For regulatory purposes, reasonable reliance upon such services in the making of a lender's determination is regarded as acceptable only to the extent "such person guarantees the accuracy of the information," as provided under the statute at 42 U.S.C. §4104b(d).

Some third-party flood zone determination companies also provide a form of life-of-loan service that monitors the flood hazard status of the secured structure for the term of the loan. Third-party life-of-loan service is designed to discover a change in flood hazard status, thereby minimizing administrative burden for the lender or servicer. The law does not require a lender to subscribe to a tracking service that provides life-of-loan monitoring.

A lender must use the FIRM or FHBM to make the determination and may supplement with other reliable information to accurately locate the building. In many instances, community officials, insurance company personnel, insurance agents, realtors, surveyors, or appraisers may be helpful and knowledgeable resources. However, due to the extent that such parties cannot, or will not, grant guarantees, reliance upon the information they provide cannot be used for exculpatory purposes if the lender is confronted with a regulatory violation or a civil claim for damages. Regardless of how

the determination is reached, the non-delegable obligation of the determination remains the responsibility of the lender.

A lender may rely on a previous determination, not more than 7 years old, when increasing, extending, renewing, or purchasing a loan, only when the previous determination was recorded on a designated SFHDF as mandated by the 1994 Reform Act. This rule does not apply when a new loan is made, or if a map revision causes a building to be located within an SFHA, or if a map change occurs after the date of the previous determination.

The 1994 Reform Act places the regulatory onus on the Federal financial regulatory agencies and GSEs to ensure that the entities under their jurisdiction require the borrowers to meet these requirements and, if coverage is mandated, to require its purchase.

### **(3) Flood Determination Fee Charged by Lender**

The 1994 Reform Act gives a lender or servicer authority to pass on a "reasonable fee" to borrowers when a determination is made in conjunction with either the:

- Making, increasing, extending, or renewing of a loan initiated by the borrower
- Revision or updating of a map
- Required "force placement" of coverage.

Passing along a fee to the borrower is not allowed on a routine portfolio review unless the review results in discovery of a loan for which coverage is specifically required.



When the flood map is revised, or in a special situation when the Director of FEMA determines that an area requires a review, a lender is permitted to conduct a search on its loan portfolio in the affected area and pass through the flood determination fee to all borrowers involved. The pass-through is permitted whether or not it is ultimately shown that coverage is necessary or already in existence on any of the affected buildings. When a search is conducted because of a map change, a reasonable fee may be charged for that service whether the flood zone determination is positive or negative. The 1994 Reform Act does not distinguish between determinations done in-house by a lender or performed by a flood zone determination company. Accordingly, a lender or servicer is entitled to charge a determination fee in either case.

The commentary that accompanied the 1994 Reform Act states that the determination fee may include the life-of-loan charge assessed to monitor the loan for its term. This Act does not specifically define what constitutes reasonableness in evaluating the fee. Also unspecified is whether incidental expenses, cost, or profit margin may be factored into the fee. The amount of the fee remains subject to review on a case-by-case basis by the applicable regulator.

Where an extension of credit is secured by an interest in real property, the Truth in Lending Act and its implementing regulation, Regulation Z, specifically provide that certain costs and fees, if bona fide and reasonable in amount, need to be *disclosed*, but need not be included in the calculation of the finance charge. The Truth in Lending statute

provides that a flood zone determination charge is excludable as a finance charge only if it is imposed in connection with the initial decision to grant credit. Therefore, a flood zone search fee that does not contain a charge for life-of-loan monitoring need not be included as part of the finance charge. The fee charged for the initial determination must appear on the HUD Good Faith Estimate, and the actual fee must be disclosed on the HUD-1 Settlement statement.

The Truth in Lending law also requires that a fee for services to be performed periodically during the loan term (for example, the life-of-loan component that is charged to monitor continued compliance) may not be excluded in the calculation of the finance charge regardless of when paid. If a consolidated flood determination fee includes a life-of-loan aspect, which cannot be apportioned between an initial credit decision or future services, the entire charge is to be considered a finance charge. If a lender is uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Regulation Z does not come into play if a lender incurs flood zone determination expenses subsequent to the closing of the loan, such as expenses arising from a remapping or the transfer of a fee to the borrower.

Section 4012a(h) of the 1994 Reform Act also contains an express provision that preempts other Federal or State law with respect to flood determination fees charged by lenders.

### **e. FEMA's Review of Determinations**

To determine whether a building is located in an SFHA, it is necessary to examine the location of the building in relationship to the SFHA shown on the FHBM or FIRM. However, despite FEMA's efforts to make the maps as useful as possible, the boundary location of some SFHAs may be difficult to determine precisely. This creates a problem in deciding whether a building on property that is the security for a loan is subject to the mandatory purchase requirement.

To a limited extent, Congress recognized this problem in the 1994 Reform Act. The new law allows for a statutory review process when the question of a building's location arises. Essentially, the law authorizes lenders to require flood insurance protection in conjunction with the loan. Occasionally, a borrower may contest the need for this insurance by contending that the building is not located within an SFHA. Upon request, FEMA will review a determination that has been conducted or obtained by a lender using the current printed map panel, provided the request meets the stipulated criteria. The review provides a forum for borrowers and lenders to resolve disputes regarding contested determinations. This procedure is intended to confirm or disprove the accuracy of the original determination. It is not intended to result in the initiation of a LOMA or LOMR or resolve questions concerning the elevation of a building.

If the issue is whether the FIRM or FHBM was read correctly, the administrative determination review procedure is appropriate. If the issue is

whether the FIRM or FHBM should be changed, LOMA, LOMR, or LOMR-F procedures are appropriate. If the determination review process indicates that the building is in the SFHA, FEMA will notify the requestor of the determination review that other procedures are available to individuals under Parts 70 and 65 of the NFIP regulations. The review procedure is found at 42 U.S.C. §4012a(e)(3)(A) of the law, with the regulations located at 44 CFR §65.17.

### **(1) Statutory Review**

#### **(a) Initiation Procedures**

If a borrower disputes a lender's determination, the borrower and lender may jointly submit a review request to the Director of FEMA during the 45-day period after the borrower is notified that flood insurance is required. Requests submitted more than 45 days after borrower notification will not be reviewed, will be returned with the fee, and should not be resubmitted.

FEMA will assess a flat fee to cover a majority of the costs associated with reviewing, recording, processing, and dis-patching FEMA determinations. The fee will also apply to a finding of insufficient information. Because the fee is not imposed or required by the lender, it is not required to be included in the finance charge pursuant to Regulation Z, 12 CFR, part 226. The lender and borrower must decide who will pay the fee. Payment must be by check or money order, payable to the National Flood Insurance Program.

## **Mandatory Purchase of Flood Insurance Guidelines**

---

The fee will be reviewed annually, and if changed, FEMA will publish a notice in the Federal Register.

Review requests should be mailed to the following locations:

- For Minnesota and locations east of the Mississippi River:

Determination Review  
Coordinator  
c/o Dewberry & Davis  
P.O. Box 2020  
Merrifield, VA 22116-2020

- For Louisiana and locations west of the Mississippi River:

Determination Review  
Coordinator  
c/o Michael Baker, Jr., Inc.  
Suite 600  
3601 Eisenhower Avenue,  
Alexandria, VA 22304-6439

The request for a determination review must be an original (not photocopied) and signed by at least one of the borrowers' legal representatives for the loan. The lender also must sign the request. To ensure the involvement of all appropriate parties, FEMA will *not* accept the signature of a third-party determinator as a representative for either the borrower or the lender. If both parties' signatures are not included in the request, the request will be returned without review. The requestor will be notified that the data submitted with the request does not meet the requirements of §65.17 of the regulations; therefore, the lender's obligation to require the

purchase of flood insurance remains in effect.

The law states that FEMA shall respond to review requests within 45 days on disputes arising out of loan originations. The 45-day time period begins on the day that the package is received by FEMA. Delay may be minimized if a request for review is submitted immediately after the borrower is notified by the lender that flood insurance is required, and if a complete data package is submitted to FEMA. Packages with insufficient information will be returned with the fee, and the parties will be advised of the information needed for the review to be accomplished. The borrower will have 14 days to resubmit the package with the fee or until the end of the original 45 days, whichever is longer. There is no additional charge.

A building found to be in an SFHA is required to have flood insurance coverage. However, if the Director of FEMA fails to respond to the review request before the later of 45 days after receipt or the closing of the loan, then there is no obligation for flood insurance coverage until the Director provides a determination. Apart from the law, it is industry practice for a lender to contractually require the prospective borrower to obtain flood insurance coverage as a condition of granting the loan. If FEMA subsequently determines that flood insurance coverage is not required, there is an NFIP procedure that allows cancellation with refund of premium for the current policy term.

### (b) Supporting Materials

Under the determination review process, the parties must present technical information to the Director of FEMA for review. This information includes the completed SFHDF (see Appendix 6), copy of the lender's notification to the borrower, applicable FIRM or FHBM panel, and all other technical information used in making the flood zone determination. A copy of the NFIP FIRM or FHBM used to make the determination should be provided, to assess whether the most current panel was used. The title block, including map date, scale bar, and north arrow, and the portion of the map including the property location (with that property location annotated) are the only portions of the FIRM or FHBM that must be provided. If the submitted data does not include all relevant information, FEMA will return the request for review.

The request must include the same technical data used by the lender or third-party flood zone determination company to make the determination. Items to complete this requirement typically include:

- A copy of the tax assessor's map showing the property
- A property survey map showing the location of the building as related to the property
- A copy of the plat for the subdivision/tract or similar document
- Information showing the relationship of the building and FIRM or FHBM.

Buildings located in rural areas, or areas where the FIRM or FHBM shows few physical features, may need additional reference data to definitively locate the property and the building on the property. For multiple-unit buildings, data must be submitted for all of the building(s) located within the same SFHA. Properties with multiple buildings must show data for all structures. A building porch or deck should be indicated in detail.

After reviewing the required supporting technical information, FEMA will issue a written determination—referred to as a Letter of Determination Review (LODR)—indicating its concurrence or disagreement with the original determination made by the lender, and stating whether the FIRM or FHBM indicates the subject building or mobile home is in the SFHA.

### (2) Administrative Review

In conducting the review to determine the accuracy of a map, FEMA will check its Community Information System database for LOMAs, LOMRs, and LOMR-Fs that would affect the determination. If the original determination overlooked a LOMA, LOMR, or LOMR-F, FEMA's final response will so state and will provide the date of the letter. LOMAs, LOMRs, and LOMR-Fs are available through the community's map repository.

In addition, the Director of FEMA will review contested determinations dealing with remapping, map revision, or a routine portfolio review. The law does not require the agency to respond to these inquiries within the 45-day time period.

Any determination that the building is not subject to the mandatory purchase requirement can be relied on until a new map becomes effective for the community. The statute states that a determination of the Director of FEMA shall be final.

### **2. Nonparticipating Communities and Restricted Coverage Areas**

#### **a. Regulated Lending Permitted**

Conventional loans can be made in communities that are not participating in the NFIP. However, federally backed loans in nonparticipating communities may be made only in non-SFHAs.

The 1973 Act, which first introduced the mandatory purchase provision, totally prohibited federally related financing by private lending institutions, as well as the Small Business Administration (SBA), Department of Veterans Affairs (VA), and Federal Housing Administration (FHA) in nonparticipating areas. This law met with some resistance, which resulted in a further 1977 amendment deleting this prohibition for regulated lenders. The 1977 law substituted a notice requirement in lieu of the prohibition on lending. That notice appears as part of the Notice to Borrower form (Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance) (see B.2.c).

Consequently, lenders regulated by, or whose deposits are insured by, Federal entities for lending regulation may make conventional loans secured by mortgages on buildings and mobile homes in SFHAs in nonparticipating communities. They may do so notwithstanding the fact that such property is not eligible for the purchase of National Flood Insurance. Lenders are still required to observe the provisions of the Federal laws and regulations governing the NFIP related to making determinations and providing notice, even though the requirement to purchase flood coverage does not apply. However, because of the lack of NFIP coverage and limited Federal disaster assistance, lenders should carefully evaluate the financial risk involved in making such loans. In nonparticipating communities, a lender may require the borrower to have in place private flood insurance, if available.

In those communities where the availability of flood insurance is limited, the inability of the property owner to purchase NFIP coverage does not prevent a lender from making a conventional loan with respect to that structure. The statute mandates coverage only when "the sale of flood insurance has been made available," 42 U.S.C. §4012a(b). As stated in the Supplementary Information section of the final regulations, a lender may exercise discretion and decline to make a loan in an SFHA where Federal flood insurance is not available. Also, lenders with significant lending in nonparticipating communities should establish procedures to ensure that loans on buildings in SFHAs where flood insurance is not available do not constitute an unacceptably large portion of the institution's loan portfolio.

Although a conventional loan may be extended in a nonparticipating community, a lender may not be able to pass such a loan on to a regulated lending institution or to the secondary market. Some GSEs, such as Fannie Mae and Freddie Mac, have stated they will not buy mortgages secured by properties in nonparticipating communities if they are located in an SFHA. To ensure that such loans are not delivered to them, Fannie Mae and Freddie Mac now require lenders to monitor, on an ongoing basis, changes in a community's status under the NFIP.

### **b. Federal Financial Assistance and Disaster Assistance Limited**

Section 42 U.S.C. 4106(a) addresses the responsibility of Federal officers and agencies dealing with Federal financial assistance in SFHAs in nonparticipating communities where flood insurance is not available. To prevent the Federal Government's financial exposure to potential loss from flood damage to uninsured buildings located in these areas, Federal officers and agencies are specifically prohibited from providing financial assistance for acquisition or construction purposes for use in SFHAs in nonparticipating communities.

Without eligibility for government-supported VA or FHA loans associated with the purchase of housing, the sale of homes is affected. Nonparticipating community residents and developers are ineligible to obtain direct Federal loans to build buildings within the floodplain. By virtue of the 1977 amendment to the 1973 Flood Disaster Protection Act, however, they remain eligible for conventional loans from federally insured banks.

The 1994 Reform Act limits Federal disaster assistance in participating as well as non-

participating communities. Section 5154a(a) of Title 42, which is part of the Stafford Act, places limits on disaster assistance benefits. The law precludes certain Federal disaster assistance related to repair of buildings, including loan assistance payments, if previously received flood disaster assistance was conditioned on carrying flood insurance and no policy is in effect.

### **c. Notification of the Unavailability of Disaster Assistance**

The 1977 amendment to the 1973 Act created a notice requirement under which a regulated lender, when lending on a secured improved real estate loan in a nonparticipating community, must notify the borrower of the unavailability of disaster relief assistance in the event of a disaster caused by flood. The notice requirement does not apply to unsecured loans, or to loans secured by buildings that are not located in an SFHA. While the 1977 amendment removed the prohibition against making conventional loans in nonparticipating communities, the "notice" provision, found at §4106(b) of the 1994 Reform Act (see Appendix 4), requires affected lenders to notify borrowers whether Federal disaster relief will be available for the building. For the convenience of lenders, FEMA has incorporated that notification into the lender notice form.

### **d. Buildings Ineligible for NFIP Coverage**

#### **(1) Underwriting Restrictions**

Some policy provisions and underwriting rules pertaining to the Standard Flood Insurance Policy preclude certain properties or parts of a building from eligibility for coverage. For example, a building built completely over water

cannot be insured under the Program if the building was newly constructed or substantially improved on or after October 1, 1982, nor can boathouses. The NFIP policies also contain restrictions on insurance coverage, such as the portions of finished basements and Post-FIRM elevated buildings where only enumerated and limited coverage is available. A complete and current list of coverages and exclusions may be found in Title 44 of the Code of Federal Regulations, Chapter I, Section 61.5, and the standard form of flood insurance policies issued under the NFIP, reproduced in Appendix A to Part 61 of the regulations.

Certain categories of properties, as described below, are located in participating communities, but flood insurance coverage is restricted. In these special situations, Congress or FEMA has chosen to deny eligibility for flood insurance, treating the buildings similarly to risks in nonparticipating communities.

### **(2) Coastal Barrier Resources Act**

The Coastal Barrier Resources Act (CBRA), 16 U.S.C. Sec. 3501, was initially enacted by Congress in 1982 to reduce or restrict Federal Government actions that were believed to encourage development in certain undeveloped coastal barrier areas, including both islands and mainland property. While CBRA does not prevent private financing and development, it does limit financial assistance by Federal agencies on undeveloped coastal barriers, except for enumerated situations such as assistance for emergency actions essential to saving lives, protecting property, and preserving public health and safety. Any form of expenditure of federal funds for a loan, grant, guarantee, insurance payment, rebate, subsidy, or any

other form of direct or indirect Federal assistance is prohibited. Such emergency assistance would not include disaster assistance and government loans.

CBRA, which also added §4028 to the 1968 Act, prohibits the NFIP from providing flood insurance protection for buildings built, or substantially improved, after the area has been designated as an undeveloped coastal barrier area.

Buildings already located in the designated areas and walled or roofed prior to the designation remain eligible for coverage. If a building built in a designated area prior to it being designated sustains substantial damage as a result of a fire, flood, hurricane, or other causes, the restored building is not eligible for flood insurance coverage.

Lenders are required to notify borrowers that the building is in an SFHA. However, the unavailability of flood insurance does not prevent the making of a conventional loan. As with loans in nonparticipating areas, lenders would be well advised to assess the flood risk in deciding whether to grant the loan.

### **(3) Buildings in Violation of State or Local Laws**

In accordance with Section 1316 (42 U.S.C. 4023) of the 1968 Act, a conventional loan can be made when the building is located in an SFHA of a participating community, but is not eligible for flood insurance protection because it has been declared to be in violation of local floodplain management building codes. Nevertheless, compliance with the provision notifying the borrower that the building is in an SFHA would be especially important. Because of violations relating to protection

against flooding, buildings that come under the provisions of Section 1316 usually will be highly susceptible to flood damages, and are a far greater risk to the lender than buildings compliant with floodplain management ordinances.

With respect to both CBRA and Section 1316 properties, the lack of available NFIP coverage in a participating community does not prohibit a lender from making a conventional loan. The statute mandates coverage only when "the sale of flood insurance has been made available," 42 U.S.C. §4012a(b).

### **C. GENERAL MANDATORY PURCHASE PROVISIONS**

This section of the guidelines describes the entities regulated by the 1994 Reform Act and specific provisions encompassed by the law. Reference is made to the statute and regulations as well as the practice of the insurance and lending industries in implementing the law.

#### **1. Entities Encompassed by the Act**

The 1994 Reform Act amended §4012a of 42 U.S.C. to address flood insurance purchase and compliance requirements and escrow accounts. The essential part of the compliance provision is contained in §4012a(b), which addresses three kinds of lenders:

- Federally regulated lenders
- Government-sponsored enterprises (GSEs)
- Federal agency lenders.

The new law focuses on compliance with the mandatory purchase requirement as the responsibility of federally regulated private lenders and GSEs that purchase loans in the secondary market. These entities must ensure that a building or mobile home and any applicable personal property securing a loan are covered by flood insurance for the term of the loan. The amount of flood insurance must be at least equal to the outstanding principal balance of the loan or the maximum amount of coverage made available under the 1994 Reform Act for the particular type of property, whichever is less.

While the 1973 Act only required the purchase of flood coverage, the 1994 Reform Act clearly specifies that flood insurance is required for the term of the loan, or any time during the term of the loan when the lending institution determines that the building or mobile home is located in an SFHA.

Section 4012a(b) subdivides its treatment of the entities regulated, yet imposes similar requirements on the three types of affected lenders. Essentially, the statute mandates flood insurance coverage even if the SFHA designation is first identified after settlement, but during the term of the loan, because of remapping or other reasons.

The 1994 Reform Act's main impact is on residential mortgage lenders and loan servicers; yet, whether the loan is for consumer or commercial purposes is irrelevant. The extension of credit may take several forms, including loan, refinancing, consolidation, or renewal of an existing extension of credit. The mandatory purchase requirement attaches to any type of secured loan, whether a fixed rate, variable rate, or balloon loan. The requirement to obtain flood insurance also applies regardless of the type of security interest taken (e.g., a



mortgage indenture, judgment note, cognovit note, or any other type of security or trust agreement). The mandatory purchase provisions apply even on those loans where real estate is secured out of "an abundance of caution."

As stated in the Supplementary Information section of the final regulation, the duties of a regulated lender with respect to Federal flood insurance requirements for a particular loan cease upon the sale of the loan. An exception would be if the seller of a loan agrees to retain responsibility for complying with the 1994 Reform Act's requirements under a loan-servicing agreement with the transferee. For example, if a regulated lender sells the loan to an unregulated lender while retaining servicing rights, it will also retain obligations under the service contract.

Most of the provisions of the 1994 Reform Act became effective on September 23, 1994, and apply prospectively to all new loans and regulated activity, but not to existing loans for which no changes have occurred since that time. Review of existing loans is encouraged, but not required, by the 1994 Reform Act.

The following entities are *not* covered by the 1994 Reform Act:

- Unregulated private financial institutions that engage primarily in the purchase of mortgage loans
- Unregulated mortgage bankers or brokers who only serve as loan originators
- Private mortgage lenders
- State regulated lending institutions not tied to Federal oversight.

### a. Federally Regulated Lenders

The most significant mandatory purchase provision is found in Title 42 U.S.C. 4012a(b)(1). That subsection directs Federal regulators to adopt regulations requiring the lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located in an SFHA, if the building, mobile home, and any applicable personal property securing such loan is to be the security for the loan. This provision is the crux of the law, around which the other requirements of the 1994 Reform Act have been structured.

The flood insurance provisions of the 1994 Reform Act require the following Federal agencies to revise their current flood insurance regulations to reflect the changes in the law:

- Board of Governors of the Federal Reserve Board
- Office of the Comptroller of the Currency (OCC)
- Office of Thrift Supervision (OTS)
- Federal Deposit Insurance Corporation (FDIC) (All State FDIC member banks, including small institutions, are subject to the amended provisions.)
- National Credit Union Administration (NCUA)
- Farm Credit Administration (FCA).

These six Federal entities for lending regulation have issued a joint regulation to fulfill the statutory requirements. All six

agencies coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC) in developing this joint regulation. The final regulation was published in the Federal Register on August 29, 1996, and appears in each agency's regulations. Citations to the various CFR sections can be found in Appendix 1.

The institutions supervised by the six agencies are referred to collectively as regulated lending institutions or lenders, 42 U.S.C. §4003(a). These lenders include any bank, savings and loan association, credit union, Farm Credit System Institution, or similar institution that is supervised, regulated, or insured by a Federal entity for lending regulation.

A significant change of position by the agencies is their interpretation of the 1994 Reform Act's new definition of "regulated lending institution" to include subsidiaries of institutions that are service corporations. This definition includes the phrase, "similar institution subject to the supervision of a Federal entity for lending regulation," as defined in §4003(a)(10). The agencies apply their flood insurance regulations to service corporations that engage in mortgage lending, believing that this position is consistent with the 1994 Reform Act's statutory language and Congressional intent. This practice also ensures uniform and consistent treatment for "regulated" financial institutions.

Federal lending regulators deem subsidiaries of the institutions they regulate as subject to the rules applicable to the operations of the parent. Therefore, although a subsidiary entity that engages in mortgage brokering or servicing may not be directly regulated, it is considered subject to the mandates of the 1994 Reform Act. As noted in the Supplementary Information section of the final regulations, the agencies believe that the purpose of the Federal flood

insurance statutes is best served by treating loans made by a subsidiary service corporation in the same way as a loan made by others in the corporate structure. For example, the FDIC's portion of the joint final rule makes subsidiaries of insured nonmember banks subject to Federal flood insurance requirements by defining the term "bank" to include a subsidiary of such institutions. The Reform Act included this provision to increase compliance with the mandatory purchase requirements among regulated lenders.

The 1994 Reform Act requires the applicable Federal regulator to develop regulations that direct regulated institutions not to make, increase, extend, or renew any loan on a building located in an SFHA unless flood insurance is purchased and maintained for the term of the loan. The Conference Committee report accompanying the Act confirms that refinancing an existing loan is to be considered as the making of a new loan for purposes of the mandatory flood insurance purchase requirements.

### **b. Government-Sponsored Enterprises**

Government-Sponsored Enterprises for Housing (GSEs) include the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Government National Mortgage Association (Ginnie Mae). These entities are privately owned, federally chartered corporations whose sole business is to support residential housing by providing a secondary market for mortgages. They are required under the new §4012a(b)(3) to implement procedures reasonably designed to ensure that designated loans have flood insurance at the time of origination and at any time during the term of the loan.

The variation in the compliance wording from that found in the regulated lender provision can be attributed to the fact that GSEs have a contractual, not a regulatory, relationship with their sellers. The GSE requirements are imposed upon the primary lender as a condition of purchasing the loan. Thus, borrowers not directly covered by the mandatory purchase law will ultimately be required to satisfy the statutory flood insurance requirements if their lenders sell their loans to Fannie Mae or Freddie Mac. The mandatory purchase requirements flow from the original transaction.

Also, under the guidelines of Fannie Mae and Freddie Mac, servicers of loans sold to those agencies are required to assume responsibility for compliance with the flood insurance requirements. However, no existing flood insurance requirements cover lenders or servicers that are not federally regulated and that do not sell loans to Fannie Mae, Freddie Mac, or other GSEs.

As secondary market agencies, GSEs have no direct contact or dealings with borrowers, but do have the ultimate exposure on the loan. Consequently, the GSE guidelines are designed to ensure that any "covered loan" they buy has flood insurance for the life of the loan. Freddie Mac and Fannie Mae now require lenders and servicers to keep flood insurance up to date, monitor publication of all future map and community changes, and impose or relieve the mandatory purchase requirement during the term of the loan.

The GSEs have the ability to establish their own requirements to protect their interest in the loans they purchase. These standards can be more stringent than those found under the Federal regulations. For example, although the Federal regulators do not require monitoring for map changes, the GSEs do, thereby providing the impetus for monitoring. See Appendix 7 for

GSE-issued guides (excluding community listings).

### c. Federal Agency Lenders

The statute in §4012a(b)(2) gives a new name to this category of lender, known as the "Federal agency lender." The law now broadens the flood insurance requirement to specifically include loans on applicable real estate secured by Federal agencies. Federal agency lenders such as the FHA, the SBA, and the VA may not subsidize, insure, or guarantee any loan if the building securing the loan is in an SFHA of a community not participating in the NFIP. For the most part, Federal agency lenders follow the same standards set by the Federal regulators, although some exceptions can be found.

## 2. Specific Provisions of the Act

### a. Limits Available

The 1994 Reform Act §4013(b) increased the maximum amounts of flood insurance available under the NFIP.

The current amounts are shown below:

<b>Building Coverage</b>	<b>Emergency Program</b>	<b>Regular Program</b>
Single-family Dwelling	\$ 35,000	\$250,000
2-4 family dwelling	\$ 35,000	\$250,000
Other residential	\$100,000	\$250,000
Nonresidential	\$100,000	\$500,000
<b>Contents Coverage</b>		
Residential	\$ 10,000	\$100,000
Nonresidential	\$100,000	\$500,000

Special limits apply in Alaska, Hawaii, Guam, and the Virgin Islands. See page RATE 1 in the NFIP *Flood Insurance Manual* for details.

The current maximum limit of coverage for residential properties is \$250,000 for building and \$100,000 for contents; and for nonresidential properties, \$500,000 for building and \$500,000 for contents. Whenever FIA changes the amounts of coverage available or amends the policy form, the change is published in the Federal Register.

### **(1) Land Not Insurable**

The Reform Act applies to improved real estate, i.e., buildings, not land. Section 4012a(b) describes the flood insurance purchase requirement for lenders making conventional loans in terms of "improved real estate or a mobile home located or to be located" in an SFHA. The law conditions the making of a loan in an SFHA upon there being flood insurance covering "the building or mobile home and any personal property securing such loan." The building must be insurable under NFIP requirements in order to qualify for an NFIP policy.

The reference to "buildings and mobile homes" is consistent with the NFIP's practice to insure only buildings, including manufactured homes (mobile homes), and not raw land. Thus, improved real estate, as used in §4012a(b) of the 1994 Reform Act, means land with a building on it. The mandatory flood insurance purchase requirement applies only to the buildings and manufactured homes that constitute the improvements on the land. Inasmuch as the NFIP does not provide insurance coverage for land, only for buildings, the location of a building in relation to the SFHA determines the applicability of the mandatory purchase provisions. Some portion of the building itself, and not just a portion or portions of the land, must be located in an SFHA for the

mandatory purchase provisions to apply. Buildings located within the Flood Insurance Rate Map (FIRM) area, but not within the SFHA, are insurable in participating communities.

### **(2) Calculating Coverage**

The NFIP policy does not provide coverage for losses to unimproved real estate, i.e., raw land. The lending regulations provide that, in addition to the statutorily prescribed dollar limits, flood insurance coverage under the NFIP is limited to the overall value of the building. Accordingly, a lender must evaluate the amount of coverage required in relation to the portion of the loan that is associated with the improved real estate (excluding the appraised value of the land), or the maximum amount of insurance available under the NFIP, whichever is less. This is especially significant in cases where the loan exceeds the value of the insurable building(s). Where the outstanding principal balance of the loan exceeds the value of the building, the lender should exclude the value of the land in determining the amount of coverage needed. When the lender does not take into account separate valuations of land, which is not insurable under the NFIP, and improvements, which are insurable, the insured may be paying for coverage that exceeds the amount the NFIP will pay in the event of a loss. Lenders should avoid creating such a situation.

Lenders should follow the same general business practice in calculating the flood insurance coverage amount on a building as they do in placing hazard coverage. The terms and conditions of the hazard clause contained in the loan document fully describe the rights and conditions of the parties.

In addition, in determining the amount of insurance to carry, lenders must consider the extent of recovery allowed under the NFIP policy forms, as described below:

- General Property Policy Form
  - Designed for use on nonresidential risks
  - Limits recovery to actual cash value; coverage is intended to include repair or replacement less depreciation.
- Dwelling Policy Form
  - Designed for use on residential risks
  - Pays losses on the basis of replacement value for primary residences where the insured has purchased insurance of up to at least 80 percent of the replacement cost of the building. Under the NFIP policy, "replacement value" means that the coverage is intended to include the full cost of repair or replacement without deduction for depreciation.
  - Pays losses on the basis of actual cash value for secondary residences and commercial buildings
- Residential Condominium Building Association Policy Form
  - Described in Section D
  - Has its own replacement cost provision.

NFIP policies now include Increased Cost of Compliance (ICC) coverage for the increased cost to rebuild, or otherwise alter, a flood-damaged property to bring it into conformance with state or local floodplain management laws. ICC coverage should not be considered as a factor in determining the amount of flood insurance required.

### (3) Deductible

The amount of the deductible is set by FEMA/FIA in the regulations. As of May 1998, the standard minimum deductible for policies rated on the basis of subsidized rates is \$1,000. A minimum \$500 deductible applies to all other policies. The maximum deductible is \$5,000. NFIP makes available optional deductibles higher than the standard \$500 and \$1,000 deductibles at a premium discount. Policyholders who wish to reduce their standard \$1,000 deductibles may opt to purchase separate \$500 deductibles for building and contents coverages, for an additional premium.

It is the practice in the financial industry for the lender to dictate the amount of the deductible based upon the authority found in the loan document hazard clause. A modification in the deductible can be accomplished at renewal or by endorsement mid-term with the lender's written request.

Neither the 1973 Act nor the lender regulations address the amount of deductible that must be carried. However, lenders often exercise their business judgment prerogative by requiring that only the standard deductible be carried as a safeguard in protecting their interest in the improved real estate. The GSE secondary-market members designate what they consider as the proper deductible. Freddie Mac's guide states the deductible may not exceed the higher of \$1,000 or 1 percent of the policy's insurance limits, subject to the maximum deductible allowed under the NFIP. Fannie Mae's guide provides that unless a higher maximum deductible amount is required by state law, the maximum allowable deductible is the

higher of \$1,000 or 1 percent of the face amount of the policy.

#### **(4) No Coverage if Land Loan Only**

If a lender makes a loan in which there is no lien on any land upon which there is a building, i.e., improved real property, the flood insurance purchase requirement does not apply. The NFIP does not insure land, and the 1994 Reform Act does not address mortgages secured by land alone. Similarly, if the purpose of a loan transaction is to facilitate the purchase of land for subsequent development, and any improvement on the real property is of nominal value, the wording of the mortgage must specifically exclude the building as part of the security for the loan in order to avoid the mandatory purchase requirement. This is consistent with the purposes for which the purchase requirements of the 1994 Reform Act were adopted: to protect lenders and Federal resources against potential losses resulting from uninsured secured loans, and to protect unwary borrowers against financial losses resulting from losses to uninsured buildings.

#### **(5) Low-Value Building on High-Value Land**

Lenders are sometimes confronted with a situation where a building is being used for residential or commercial purposes on land whose value alone would be sufficient to secure the loan without regard to the value of the building. In this situation, the 1994 Reform Act does not give a lender the option of enabling the borrower to avoid the purchase of flood insurance, even though the value of the land would provide more than adequate security for the amount of the loan, without taking into account the value of the building on the land. If the land has a building

on it, and the lender has a security interest in that building, the lender must require the purchase of flood insurance to protect its security interest. The insurable value of the building and its improvement(s) will govern the amount that can be required. The amount of required flood insurance coverage is the lesser of the principal balance of the loan(s) or the maximum coverage available under the NFIP. The NFIP policy does not provide coverage for losses in excess of the value of the insurable building. By carrying coverage, the lender also is protecting the Federal Government's interests by preserving the assets of agencies that insure the lender's deposits.

The question of limits on high-value land with relatively low-value buildings can be an issue in agricultural lending. The regulators have made clear that Congress, in enacting the 1994 Reform Act, did not differentiate agriculture from other types of lending, and no exception by regulated lenders can be made without legislative action.

The value of the land should be deducted from the overall value of the secured property when calculating the required limits.

#### **(6) Buildings in the Course of Construction**

When a structure is to be built in an SFHA that, when completed, will be a walled and roofed building that will be eligible for coverage, flood insurance must be purchased to provide coverage during the construction period. Therefore, when a development or interim loan is made to construct insurable improvements on land, flood insurance coverage must be purchased. The only practical way of implementing the flood insurance coverage is

to require the purchase of the policy at the time that the development loan is made, to become effective at the time the construction phase is commenced, and in an amount to meet the mandatory purchase requirement.

Material to be used on a building in the course of construction, but yet to be walled and roofed, is eligible for flood insurance, subject to certain underwriting restrictions. The NFIP, to the extent possible, conforms its practices with those of fire insurers by providing insurance coverage that begins during the period of time when construction is taking place.

For new construction in Regular Program communities, the Elevation Certificate and the premium will be based on an elevation figure derived from construction drawings. However, the policy will not be renewed until a new Elevation Certificate, based on actual construction, has been submitted. Coverage under the policy becomes available immediately when the construction starts, and is not delayed until the building has reached a roofed and walled condition.

### **(7) Mobile Homes**

The statute brings within its scope a loan securing mobile homes that are, or will be, located in an SFHA. The loan need not include security in the real estate underlying the mobile home in order for the mandatory purchase provisions to apply. NFIP coverage is available only with respect to a building or mobile home and not the land on which the building or mobile home sits. A chattel mortgage on a mobile home will trigger the mandatory purchase requirements.

The lending regulations and FEMA/FIA use the term “manufactured home” interchangeably with “mobile home.” FEMA has defined this term in its regulations. See 44 CFR 59.1 (defining manufactured home), 44 CFR 61.13, and Appendix A to 44 CFR part 61 (FEMA's standard insurance policy defining mobile home as meaning manufactured home). To be eligible for coverage in an SFHA, a manufactured home must be on a permanent foundation and meet specific anchoring requirements. A manufactured home does not include a recreational vehicle.

The supplementary information that accompanies the regulations acknowledges that in some situations a lender may not know where the manufactured/ mobile home will be located until just prior to the time of loan closing. The agencies will not apply the borrower notice requirements to those “home only” mobile home transactions that close before the permanent location for the mobile home is known. Clearly, a lender cannot determine whether flood insurance is required before the location of the mobile home has been fixed. Upon learning the location of the mobile home, the lender must use its best efforts to determine whether the mobile home is in an SFHA, notify the borrower, and mandate the purchase of any required flood insurance.

Although the Real Estate Settlement Procedures Act (RESPA) does not require escrowing on a loan where land is not part of the security, the scope of the 1994 Reform Act includes escrowing on a designated loan secured by a mobile home. Section 10 of RESPA, which pertains to the escrow rules, only applies to mobile homes that are also secured by

the real estate upon which they are situated; however, the 1994 Reform Act is broader in scope. A mobile home lender is required to escrow even if the loan is on the mobile home only.

A substantial number of mobile homes have the peril of flood included under a private contract of insurance. A lender should review the private flood insurance coverage in light of the mandatory purchase and FIA guidelines (see Section E.5 of these guidelines).

### **(8) Personal Property**

As specified in §4012a(b)(1) of the 1994 Reform Act, contents coverage is not required unless personal property, in addition to a building, secures the loan. Since residential mortgages rarely include personal possessions as part of the loan security, lenders are not required to compel borrowers to purchase contents coverage. When a commercial loan on a building includes inventory and other trade or business movable property as security for a loan, that property must be covered by flood insurance under contents coverage. On the other hand, flood insurance is not required for a loan financing inventory where the secured collateral is stored in a building located in an SFHA and the building is not security for the loan. Lenders are encouraged to advise borrowers to include contents coverage for personal property and inventory when it is prudent to do so.

### **b. Underinsured Buildings**

The 1994 Reform Act repealed Title 42 U.S.C. §4013(b)(6), which contained a statutory limit for coverage required to be purchased. The Act requires coverage that is "in an amount at least equal to the outstanding principal balance of the

loan or the maximum limit of coverage made available . . . ." The maximum amounts available are described in Section C.2.a above. Loans that previously had principal balances at the program limits may be found to be underinsured because of the new cap on limits. Lenders and servicers may adjust coverage limits at policy renewal.

To address the underinsurance deficiency, §4012a(e) of the 1994 Reform Act specifies a lender's notification and placement requirements for a building covered by less flood insurance than required by the Act. The statute designates the same steps to be followed in the event additional insurance is required as when no insurance exists. When a lender (or a servicer acting on the lender's behalf) discovers that a building used as security is not covered by an adequate amount of flood insurance, it must first provide notice and opportunity for the borrower to obtain the necessary amount of flood insurance. The lender then must purchase flood insurance in the appropriate amount on the borrower's behalf if the borrower fails to purchase it.

### **c. Home Equity and Second Mortgages**

Flood insurance is required on designated home equity or second mortgage loans made by regulated lenders if the loans are secured by a building or a mobile home, regardless of the lien priority. Lenders also need to be cognizant that GSEs have specific provisions in their sales guides that mandate flood insurance on designated home equity and secondary mortgages. The location of the secured property, not the use of funds received on a home equity or second mortgage, governs whether flood coverage is required.

Even though home equity and second mortgage loans are subordinate to a primary loan, the terms of the mandatory purchase law apply with



equal force. No matter what priority its loan may be, a lender remains subject to the various provisions of the Act, including the notification, Standard Flood Hazard Determination Form, and force placement requirements. However, as described in the waiting period section, the 30-day delay in effective date has been deemed by FIA not to apply on home equity loans and second mortgages. Coverage may go into effect without a waiting period.

Subject to the limit on insurance available and the requirement cap, a home equity lender must protect its interests by having coverage in place at the time the loan is extended. The lender must make a determination about the flood insurance requirement when the application for the loan is made. If the first mortgagee otherwise complied with the mandatory purchase requirements and no remapping has occurred, then no new determination is needed for the second mortgage or home equity loan. Drawing against an approved line of credit does not require further determinations to be made.

For loans with approved lines of credit to be used in the future, it may be difficult to calculate the amount of insurance for the loan because the borrower will be drawing down differing amounts on the line of credit at different times. In those instances where there is no policy on the collateral, the borrower must, at a minimum, obtain a policy as a requirement for drawing on the line. For administrative convenience in ensuring compliance with the requirements, a lender may take the following alternative approaches:

- Review its records periodically (at least annually) so that as draws are made against the line or repayments made to the account, the appropriate amount of insurance coverage can be maintained; or

- Upon origination, require the purchase of flood insurance for the total amount of the loan or the maximum amount of flood insurance coverage available, whichever is less.

If a secondary lienholder determines a first mortgagee has neglected to obtain flood insurance coverage, it must be assured that coverage is purchased on the entire outstanding loan amount in order to comply with the 1994 Reform Act as well as to protect its priority as to insurance proceeds. Similarly, if the first mortgage has insufficient coverage, the borrower must cure this deficiency by purchasing additional coverage sufficient to protect all outstanding loans. Apart from the provisions of the 1973 Act, the lender can rely on the hazard clause of the home equity or second mortgage loan document in requiring coverage in any underinsured situation.

Since only one NFIP policy can be issued on a building, no matter how many loans exist, a secondary lienholder must verify that any required escrow of premium is being undertaken by the primary lienholder (see the escrow discussion at Section C.2.g). Accordingly, the lienholder must coordinate coverage through its borrower and the insurance agent of record. A home equity and secondary lienholder's interest is accomplished by endorsement to the policy.

Evidence of coverage can be confirmed by receipt of an insurance certificate from the agent or a revised declarations page from the insurer. A secondary lienholder should ensure its interest is protected by having its name appear on the policy or by other appropriate means. If the existence of a home equity loan or a second mortgagee is not made known to the insurer, appropriate renewal notices may not be sent.

The small loan exception of the 1994 Reform Act only applies if the original principal balance is \$5,000 or less, and under a repayment term of 1 year. These criteria normally do not apply to home equity loans.

### **d. Notification Requirements**

Under the 1994 Reform Act, all regulated lenders and Federal agency lenders must provide the following notices:

- Notification to Borrower, otherwise known as "Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance"
- Notification of Change of Servicer.

In addition, the lender should receive an Expiration Notice from the insurer. These notices are discussed below in the order presented (also see Appendix 4).

A lender also must complete the Standard Flood Hazard Determination Form (SFHDF) (see Appendix 6) prior to concluding loan processing.

#### **(1) Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance**

Lenders must continue to notify only those prospective borrowers whose loans secure a building located in an SFHA. The purpose of the notice is to advise the borrower about the Federal flood insurance coverage requirements and whether Federal disaster relief assistance is available in that location. In the case of multiple applicants on a single loan, each applicant should receive the notice.

The notice can be accomplished using the sample form attached to these guidelines as

Appendix 4. The notice form can also be found as an appendix following the text of each agency's regulations. Use of the sample form is not mandatory. A lender will be considered to be in compliance with the notice requirement if the sample form is used, or if the required language of the form is used in another format. A lender may personalize and change the format of the sample form, but must provide the borrower with the minimum information contained in the regulations.

The notice must be provided a reasonable time before completion of the loan transaction to ensure that a flood insurance determination is made as a condition of a loan being closed. The regulations do not establish a fixed time period in which a lender must provide the notice. Instead, they state that what constitutes a reasonable time will necessarily vary according to the circumstances of the particular transaction. The agencies consider the giving of the notice 10 days prior to completion of the transaction as a reasonable time interval. Completion and delivery of the notice within this time period serves both to inform the borrower and to protect the lender.

In lieu of giving direct notice, the law provides that a financial institution may obtain "adequate assurances" in writing, from the "seller or lessor" of the property, that the borrower has been advised of all required information by the lender prior to settlement. The burden of determining the flood status of the property and providing notification remains with the lender, whether the notice is handled directly by the lender or through others.

The regulations track the 1994 Reform Act by also requiring a lender to extend this notification to any servicer of the loan. A lender must notify the servicer as promptly

as possible after notifying the borrower, and in any event not later than the time that loan data such as hazard insurance and tax information is transmitted to the servicer. The notice may be provided in the same form as the notice to the borrower. This provision applies even if the servicer is affiliated with the lender.

The text of the Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance must include the following:

- A general warning with respect to the chance of flooding
- A description of the mandatory purchase requirements
- An explanation of the eligibility requirements to receive disaster relief
- A discussion of the availability of flood coverage through:
  - An insurance agent from the Direct NFIP (NFIP Servicing Agent)
  - A WYO insurer
  - A private flood insurer.

The form also references the review or appeal process through which a disputed flood hazard determination may be jointly submitted to FEMA for a final determination on whether a building or mobile home is located in an identified SFHA. The appeal process is explained more fully in Section B.1.e.

Because the form is also used by lenders for loans in nonparticipating communities, as required by §4106(b), it is also designed to advise borrowers whose property is located in an SFHA in those communities where NFIP flood insurance is unavailable. As

stated earlier, a lender may choose to make a conventional loan in an SFHA in a nonparticipating community. However, government-guaranteed or insured loans (e.g., SBA, VA, and FHA loans) are not permitted to be made in those communities.

The notice required by this provision is different from the Uniform Residential Appraisal Report form, which contains questions on the location of a building relative to the SFHA. The appraisal report form is used by many lenders and Federal entities, such as Fannie Mae, Freddie Mac, HUD, and VA.

The regulations require the lender to retain a record or evidence of the borrower's receipt of the notice throughout the period the lender owns the loan. This record can be the borrower's statement or initials that the notice was received directly, or the U.S. Postal Service return receipt in either hard copy or electronic format. The lender need not retain a hard copy version of the notice to the borrower and loan servicer.

The applicability of this notice requirement to mobile homes is discussed in Section C.2.a(7) of these guidelines.

### **(2) Notification of Change of Servicer**

The 1994 Reform Act in §4104a(b) mandates that, if the secured property is in an SFHA, a regulated lender must notify the Director of FEMA or the Director's designee of the identity of the loan servicer when a loan is made, increased, extended, renewed, sold, or transferred. FEMA has designated the various WYO insurers, or the NFIP's \_\_\_ Servicing Agent, as its representatives to receive the notice regarding change of servicer.

When a policy is first written, the agent fulfills the notice requirement by indicating on the policy application the name of the mortgagee who is to receive notices. The obligation on the part of the seller of the loan to inform FEMA's designee is also triggered each time the loan is assigned or transferred to another lender or servicer. The notice is to be sent to either the WYO insurer (directly or through the agent of record) or to the NFIP Servicing Agent if that entity is the insurer.

This notice requirement may be accomplished by utilizing whatever electronic or hard copy format the parties generally use. The regulators acknowledge the use of the RESPA Notice of Transfer of Servicing form, designed to advise a borrower of the replacing servicer's identity, as sufficient to meet this requirement if it contains all relevant information.

The information needed by FEMA or its designee includes:

- Borrower's name
- Flood insurance policy number
- Property address (including city and state)
- Name of lender or servicer making notification
- Name and address of new servicer
- Name and telephone number of contact person at new servicer.

The notification of the identity of the servicer is in the nature of a "general change endorsement," which is completed and submitted to the WYO insurer or NFIP Servicing Agent by the insurance agent of record.

The law requires this notification to be sent by the incumbent lender or servicer to the

Director's designee not later than 60 days after the effective date of such change. This duty to notify is, in turn, passed along to the new (transferee) regulated lender or servicer upon subsequent change of servicer.

This notice procedure accomplishes several objectives:

- It makes the insurer aware of the identity of the party designated to receive mailings such as the expiration and policy renewal premium notice, which the 1994 Reform Act now requires the insurer to mail 45 days prior to the anniversary date.
- It eliminates any failure on the part of subsequent lenders or servicers to notify the insurance agent or insurer of a change in a mortgagee (or servicer) in order to enable renewal and/or expiration notices to be sent to the proper lender or servicer of the loan.
- This new requirement is designed to combat the high nonrenewal rate that occurs after the first year of the loan. For example, in the case where the insurance payments are not escrowed, without the updated information the mortgagee or servicer would have no way of verifying whether the borrower continued to renew the policy or allowed it to lapse.

The regulations make no provisions as to recordkeeping of the change of servicer form; however, the lender and servicer have the burden to demonstrate the notice was given.

If one institution acquires or merges with another, the successor institution must

provide notice for the loans being serviced by the disappearing institution if the disappearing institution did not provide notice prior to the effective date of the acquisition or merger.

Although the statute requires the Director of FEMA or the Director's designee to be notified when servicing is transferred, neither the statute nor the regulations require notice when a loan is paid off.

### **(3) Expiration Notice**

The Reform Act (42 U.S.C. 4104a (c)) and the SFIP both require the Director of FEMA (regarding direct business) and the Director's designee (i.e., a WYO carrier on WYO policies) to send a notice of the date of expiration of the policy contract. This expiration notice must be sent by first class mail to the insured, any known mortgagees, servicer, and the owner of the property. FEMA interprets the term "owner of the property" as used in the statute to mean the party insuring the risk. An expiration/reissue notice is also mailed to the insurance producer. The notice is to be sent not less than 45 days prior to expiration to the last known address of the recipients. The law does not require proof of receipt of the notice. The statutory notice provisions are in addition to any applicable terms and conditions found in the SFIP, as well as any obligation found in the mortgage or lending document between the debtor and creditor.

Under the provisions of the SFIP, the WYO insurer and the NFIP Servicing Agent also must notify the lender, or servicer acting on behalf of the lender, along with the borrower, when the insurance contract is due for renewal.

### **e. Standard Flood Hazard Determination Form**

Independent of the notice requirements, a separate provision was added in the 1994 Reform Act, 42 U.S.C. §4104b, that now requires a lender to document a loan by entering information on the newly developed SFHDF. FEMA has developed a one-page standard form for recording the results of the determination of whether a building or mobile home is located in an SFHA. The authorizing regulation is found at 44 CFR §65.16, and the form is found in Appendix 6. The law requires the form to be used for all loans, not only those for which the building or mobile home is in an SFHA. The six agencies' joint final regulation requires their respective regulated lending institutions to use the SFHDF. In addition, the Fannie Mae and Freddie Mac Seller/Servicer Guides (see Appendix 7) also require use of the SFHDF.

Lenders will use the SFHDF to document the process of determining whether or not flood insurance should be required in connection with a given mortgage loan transaction, while Federal banking entities will use it to monitor compliance by lenders. The form will document that a determination was made for a building or mobile home, whether it is in or out of the SFHA, whether flood insurance is required, and whether Federal flood insurance is available.

### **(1) Determination Process**

The lender can complete the form itself, or use an outside service to track and analyze the FIRM or FHBM. FEMA does not perform individual property flood hazard determinations. The lender must take the responsibility for making determinations, regardless of whether the

lender actually makes the determination internally or acquires determination services from another source. The 1994 Reform Act (42 U.S.C. §4104b(d)) states that the lender may provide for the acquisition or determination of flood hazard information to be made by a person other than the lender only to the extent such person guarantees the accuracy of the information. Neither FEMA nor the lending regulators have designated standards for what constitutes an adequate guarantee of the information provided to justify reliance upon the data.

A previous determination may not be reused when making a new loan. If the loan is not new, i.e., if the transaction pertains to increasing, extending, renewing, or purchasing an existing loan, the determination can be reused if:

- It is less than 7 years old.
- No new or revised FIRM or FHBM has been issued in the interim.
- It was initially recorded on the SFHDF that became effective January 2, 1996.

The regulators will impose no regulatory penalty if the prior determination meets the above requirements. Once a new FIRM or FHBM has been issued, a lender must use the new map as a guide, and a new determination is required. Any disputes that arise between the lender and borrower concerning the location of a building in relation to an SFHA are eligible to be resolved in accordance with the review process as described in Section B.1.e.

If a borrower obtains a home equity or second mortgage from its first mortgagee that is secured by a secondary lien position,

and provides evidence that adequate flood insurance coverage is in place for all loans, the lender can rely upon the original SFHDF if no remapping has occurred.

### **(2) Instructions for Using the SFHDF**

The reverse side of the SFHDF has detailed, section-by-section instructions on its use. A separate SFHDF is required on loans on adjacent properties. However, if a single property contains multiple buildings, a listing of buildings on the parcel can be attached to the SFHDF. Only one building may be insured under one NFIP policy. Each building securing a loan must be covered by a separate NFIP policy.

The SFHDF may be used in a printed, computerized, or electronic manner and must be retained in either hard copy or electronic format. FEMA has addressed the required format of an electronically maintained form in its regulation. It is FEMA's position that if an electronic format is used, the format and exact layout of the SFHDF are not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the SFHDF.

The form need not be kept in the loan file, but a lender is expected to be able to retrieve the record within a reasonable time period upon being requested by its Federal supervisory agency. Lenders are neither required to provide nor prohibited from providing the WYO insurer, insurance agent, or the borrower with a copy of the form.

Lenders and servicers are reminded that the 1994 Reform Act gives them the responsibility of determining the flood

zone location of each mortgaged building. They cannot discharge the duty simply by obtaining some form of self-certification or assurance from the mortgagor-borrower that the building is not in an SFHA. If the lender wishes to change its original determination of the building's location based on information submitted by the mortgagor, the lender/servicer must convince itself that its original determination was in error and make any change based on its review of that new information. A lender or servicer should not simply accept unsubstantiated allegations, from whatever source, about the building's flood zone location. The ultimate responsibility for making such determinations under the statute rests with the mortgagee, not the mortgagor. Contested determinations are subject to the review process described in Section B.1.e of these guidelines.

### **f. Waiting Period and Exceptions**

The 1994 Reform Act modifies the waiting period required before an NFIP policy can go into effect from 5 days to 30 days. This 30-day wait is for "coverage under a new contract for flood insurance" and "any modification to coverage under an existing flood insurance contract." The express intent of Congress in mandating a 30-day waiting period was to prevent the purchase of flood insurance at times of imminent flood loss. Therefore, unless an exception applies, as described in the following two subsections, a 30-day waiting period applies.

#### **(1) Coverage Obtained in Conjunction With a Loan**

Exceptions to the 30-day waiting period apply when coverage is placed in conjunction with loan activity or the

remapping of a community. The 1994 Reform Act (42 U.S.C. 4013(c)) contains what is called the "initial purchase" provision, which states the 30-day waiting period does not apply to the following instances:

- "The initial purchase of flood insurance . . . when the purchase is in connection with the making, increasing, extension, or renewal of a loan, " or
- "The initial purchase of flood insurance . . . pursuant to a [map] revision or updating of floodplain areas of flood zones" within a 1-year period.

The effective date of coverage is 12:01 a.m. (local time) on the first calendar day after the application date and the presentation of payment of the premium.

It is significant to note that the first exception described above to the 30-day waiting period (when the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan) is much broader than it appears. Pursuant to FIA Policy Issuance #5-98, effective October 1, 1998 (see Appendix 8), the FIA has interpreted the exception to the 30-day waiting period to apply in situations pertaining to refinancing, placement of second mortgages, and modification of existing mortgages. The Policy Issuance also applies to force placement, increased limits at renewal, and map revisions. For a detailed description of the waiting period rules, refer to the FIA Policy Issuance.

#### **(2) Assignment of Policy**

There is no waiting period when an existing policy is assigned to a purchaser of improved real estate.

Prior to the 1994 Reform Act, the regulations provided for no wait in the case of a title transfer, so long as the policy was applied for and the premium was paid at or prior to the time the title transfer or assignment of the policy occurred. Now, unless there is an assignment of the policy from the seller to the buyer where the purchaser does not obtain a mortgage, a 30-day wait is required by 42 U.S.C. §4013c(1).

The SFIP form contains an assignment provision in the General Conditions and Provisions Article, which allows an assignment upon transfer of title.

### **g. Escrow Requirements**

The escrow requirement, Section 4012a(d), is limited to instances where a lender establishes an escrow account for a loan for another purpose. If financial institutions and their servicers require the escrow of taxes, insurance premiums, or any other fees or charges for covered loans, they must also escrow for premiums and fees for flood insurance.

#### **(1) Real Estate Settlement Procedures Act**

The mandatory purchase law expressly states that escrow accounts established under the 1973 Act are subject to the escrow account provisions of Section 10 of the Real Estate Settlement Procedures Act (RESPA) of 1974, which imposes accounting and notice obligations on a lender for consumer loans. However, in the Supplementary Information section of the final regulation, the agencies do address differences between the scope of coverage of the 1994 Reform Act and

RESPA. They do not believe the 1994 Reform Act is intended to impose the particular requirements of Section 10 on loans that are not subject to RESPA generally, for example, commercial loans secured by residential buildings. The regulations note that nothing in the legislative history of the 1994 Reform Act suggests that Congress meant to extend the scope of Section 10 of RESPA in this way through the enactment of the 1994 Reform Act. Without specific direction from Congress, the agencies do not believe that they have the authority to expand RESPA's Section 10 coverage to loans that are not otherwise subject to RESPA.

RESPA, which generally limits the amount that may be maintained in escrow accounts, and requires notices containing escrow account statements for those accounts, applies primarily to escrow of consumer loans. Generally, this means that only loans on one- to four-family dwellings will be subject to the RESPA escrow rules. Loans on multi-family dwellings of more than five units are not covered by these requirements. However, even though they do not have to follow the RESPA escrow requirements contained in HUD's Regulation X, 24 CFR 3500.17, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrow for other purposes such as hazard insurance or taxes.

Therefore, other than for consumer mortgage loans, escrow accounts need not comply with the requirements of Section 10 of RESPA. As the preamble to the joint final rule points out, however, regulated lending institutions must comply with the escrow requirements contained in the 1994 Reform Act; it is the method of escrowing that may not be subject to Section 10 of RESPA.



Although the escrow provision only applies to residential loans, lenders are encouraged to escrow on all loans, including those on nonresidential improved real estate.

### **(2) Applicability**

Unlike the RESPA escrow requirements, the escrow of flood insurance includes not only single-family buildings, but also multi-family properties containing five or more residential units. Consequently, escrow on certain residential real estate is required, even though the property may be secured under a commercial or business loan. The 1994 Reform Act's escrow provision applies to both home mortgage loans and commercial loans (including, for example, mortgages on apartment buildings or construction loans secured by residential buildings), but only if the lender requires the escrow of other charges for those loans. The mandatory purchase provisions make no distinction between single or multi-family dwellings or owner or renter occupancy. The lender is to consider the primary purpose of the building in making its determination. For example, if a building is a mixed-use property, i.e., part residential and part commercial, the primary purpose of the building controls.

Escrowing on all mobile home designated loans is required under the 1994 Reform Act, even though RESPA only requires escrowing if the loan encompasses the land upon which the home is situated.

The 1994 Reform Act's escrow provisions apply to financial institutions and their servicers, but do not apply to mortgage company originators over whom a Federal regulator has no jurisdiction.

Regulators will examine the loan practices of the lender to determine if the escrow is required. If a lender's loan practices indicate that escrow is normally required and the loan documents permit escrow accounts to be established, the regulators presume that an escrow account for flood insurance premiums also should be established in the event flood insurance is mandated. Various escrow-type accounts established for loans involving multi-family properties that are substantially different in purpose from single-family residences (e.g., interest reserve accounts and compensating balance accounts) do not constitute escrow accounts under the mandatory purchase requirements. If an escrow account is required, the law requires it to be set up "in a manner sufficient to make payment as due for the duration of the loan."

The flood escrow requirement facilitates the lender making payments as due for the life of the loan. In the past, a significant number of lenders did not require escrowing of flood insurance coverage; in those situations, NFIP coverage was susceptible to lapse. As stated in the committee report, the drafters of the law were mindful that a major reason for the lack of compliance with the NFIP was that many homeowners, believing they would not be flooded, simply stopped paying premiums on their flood insurance policies.

The new escrow practices are designed to balance the need to increase participation with the desire to prevent significant new burdens on lenders and borrowers. Requiring lenders to escrow for flood insurance premiums is expected to significantly improve participation in the NFIP.

### **(3) Escrow Exclusions**

Not all accounts established in connection with a loan secured by residential buildings are considered to be escrow accounts that would trigger the requirement for the escrow of flood insurance premiums. The escrow provision for flood insurance would not be triggered in the following situations:

- Voluntary escrowing for credit life insurance
- Establishing accounts in connection with commercial loans for such items as interest or maintenance reserves or compensating balances. Generally, accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself rather than to the protection of the property, would not trigger the escrow requirements for flood insurance premiums.
- Voluntary escrowing for other expenses (escrow is not required, but established at the borrower's request)
- Lender termination of an escrow account for a loan.

### **h. Force Placement**

#### **(1) Authority**

Similar to the requirements concerning the issuance of the various notices and escrow, the 1994 Reform Act places responsibility to force place on lenders as well as servicers. The Act requires the force placement of flood insurance if a servicer or lender determines that the building securing the loan

is not adequately insured. The 1994 Reform Act also grants statutory authority to a lender or servicer to purchase flood insurance for the building and charge a premium to the borrower if the building is in an SFHA.

By enacting 42 U.S.C. §4012a(e)(2), Congress intended lenders to have clear authority to force place; under certain circumstances, they are obligated to force place. The force placement of coverage is designed for use at any time during the term of a loan in uninsured and under-insured situations; it is not intended for use at loan origination. If a borrower refuses to obtain flood coverage as a condition of obtaining a loan, the loan is deficient and is not to be made.

If at any time during the term of a covered loan, the lender or servicer determines that the building securing the loan is not covered by flood insurance, or is covered by such insurance in an amount less than that required by law, the lender or servicer must first notify the borrower of the need to carry adequate flood insurance coverage. The law does not specify the precise wording of this notice, so lenders and servicers should give a close reading to the statute and regulations for guidance. The notice must state that the borrower should, at the borrower's expense, obtain flood insurance that is not less than the amount required under the law.

If the borrower fails to purchase such flood insurance within 45 days after such notification, the lender or servicer shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer. In an underinsured

situation, when the borrower and the agent of record refuse to cooperate with the new lender, the loan should not be made. If the loan has already been extended, the lender should exercise recourse as provided under the terms of the loan document.

The 30-day waiting period enacted with the 1994 Reform Act does not apply to force-placed policies; instead, the 45-day period from time of notification that a lender must grant to a borrower to voluntarily obtain coverage is the only time delay that controls.

The 1994 Reform Act (42 U.S.C §4012a(f)(6)), contains preemption language stating that the NFIP force placement provisions prevail over state and local law. This wording is significant because many of the state laws that cover force placement are vague and open to interpretation. In addition, this subsection responds to those state laws that prohibit or limit the forced placement, or require the borrower's contractual agreement in order to force place coverage.

### **(2) Applicability**

The terms of the force placement law are broader in scope than the escrow requirement. Force placement applies to any borrower of a designated loan, commercial or residential, whether or not escrow of expenses is required. On any type of force-placed policies, a lender should keep evidence of the determination of whether the loan is in an SFHA, including information concerning the map panel and method by which the determination was made.

Home equity and second mortgage loans also are included under the requirement. A secondary lienholder that force places coverage only to the extent of its loan will

not protect its interest if a first mortgagee claims priority to any insurance proceeds. Force placement by a second mortgagee will require coordination with the first mortgagee, as well as with the insurance producer and insurer on the first mortgage, if one exists.

The 1994 Reform Act requires a designated loan to be covered for its term, in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage available. Although the 1994 Reform Act only requires the lender's interest to be protected by flood insurance, a lender may need to consider other factors, such as Fannie Mae and Freddie Mac requirements. Depending on the practice of the mortgagee, the policy may not be sufficient to protect the full equity amount held in the property by the mortgagor in the event of a loss. If the lender opts to protect only its security in the loan, the amount of the policy may be insufficient to cover the full insurable value of the building.

The 1994 Reform Act requires a lender to carry out the force placement as a matter of law, independent of the contractual provisions of the loan. Force placement is not limited to those situations provided for under the mandatory purchase law. Basic loan documents provided by Fannie Mae and Freddie Mac contain language that permit a lender or servicer to force place if necessary. The standard Fannie Mae and Freddie Mac documents permit the lender or servicer to add the force placement charges to the principal amount of the loan.

Force placement of flood insurance is intended only as a last resort, and on mortgages whose mortgagors have failed

to respond to the notifications required by the law.

The 1994 Reform Act provides that a lender must inform its borrowers that they have a "free choice" of an insurer from whom to purchase coverage (§4104a(a)(3)(c)). That free-choice purchase option also applies to a lender when dealing with force-placed coverage. If, within 45 days from the notice, a borrower fails to comply by voluntarily obtaining coverage, a lender or servicer must either:

- Obtain an NFIP policy through a WYO insurer that participates in the Mortgage Portfolio Protection Program (MPPP), or
- Secure a Standard Flood Insurance Policy through either a WYO insurer or the NFIP Servicing Agent, or
- Obtain flood coverage from a private industry insurer if such coverage is available.

### **(3) MPPP Method of Placement**

Most loans in which flood insurance is force placed must be processed with a limited amount of underwriting information. Therefore, placement is appropriate through the Mortgage Portfolio Protection Program (MPPP), where only limited underwriting information is required.

The MPPP is an optional program designed for lenders to force place flood insurance coverage under the NFIP with WYO insurers that have agreed to comply with the requirements of the MPPP. The Direct NFIP program does not offer the MPPP. The procedure for using the MPPP has been

added to the regulations at 44 CFR §62.23 subsection (L). Other aspects of the MPPP can be found at Vol. 60, No. 167 of the Federal Register

p. 44881 et. seq., a copy of which appears in Appendix 9.

The MPPP is an annual policy and, although it cannot be renewed, it can be rewritten each year if the required procedures are followed. The MPPP policy is rated based on the FIRM or FHBM in force at the time the policy is written. The rates allowed to be charged for force-placed policies are considerably higher than those rates available for voluntary policies because of the absence of any underwriting data. Under this program, the mortgagee obtains coverage for itself as well as the borrower; the NFIP insurance policy is a dual interest policy, whereby one contract covers both the borrower and the lender.

The NFIP *Flood Insurance Manual* should be consulted for additional information about using the MPPP to force place policies.

### **(4) Standard NFIP Policy**

A lender also may force place flood insurance by purchasing a Standard Flood Insurance Policy (SFIP) from either a WYO insurer or the Direct NFIP program.

If a lender opts to obtain coverage under an SFIP, certain underwriting information must be available to the agent in order to place the policy. If adequate information is available, the rates used to calculate the premium will be the same as used on the SFIP rather than those used under the MPPP.

After the expiration of the 45-day waiting period, if the lender has sufficient

information to produce a policy, it may place a policy with an insurer through an agent of its choice. This method of insuring the risk does not entail the use of any specific notice to the borrower.

### **(5) Private Flood Insurance**

A lender has the option of force placing flood insurance through a private (non-WYO) insurer. Although very few carriers are generally willing to accept personal lines flood risks, some insurers will selectively write the coverage. If private insurance is available, the lender also must consider whether the policy, as well as the insurer, is acceptable to its regulator by meeting the criteria defined by the FIA. The FIA criteria are fully described in Section E.5 of these guidelines.

### **i. Exceptions**

#### **(1) State-Owned Property**

If the security property is state-owned and covered by adequate policies of self-insurance, flood insurance is not required. FEMA maintains a list of states with adequate self-insurance programs. This exemption, by its terms, applies only to state-owned property, and not county- or city-owned property.

#### **(2) Small Loan**

Section 4012a(c)(2) provides an exemption from the mandatory purchase requirements for any loan made with an *original* outstanding principal balance of \$5,000 or less, and with a repayment term of 1 year or less. The dual criteria must be met in order for this exemption to apply. There is no exemption for home equity or second mortgage loans unless they meet these exceptions.

### **D. CONDOMINIUMS, COOPERATIVES, AND TIMESHARES**

The mandatory purchase requirements apply with equal force to condominium, cooperative, and timeshare units. Placing and monitoring coverage on units within a multi-unit building present special circumstances to lenders and merit particular treatment. Generally, the applicability of the mandatory purchase law can be explained through a review of how the various NFIP policies correspond to the forms of ownership of common interest community organizations, as follows:

- The Residential Condominium Building Association Policy (RCBAP) applies to all high-rise and low-rise residential condominium buildings and some timeshares in the Regular Program.
- The General Property Policy applies to cooperatives and some timeshares and condominium buildings not eligible for the RCBAP.
- The Dwelling Policy may be issued on an individual unit.

For eligibility requirements and limits available on the various coverages under these policies, refer to the Condominium section of the NFIP *Flood Insurance Manual*. Also, see Appendix 10 for the NFIP's Policy Issuance regarding this coverage.

#### **1. Condominium Associations**

Condominium association board members have a fiduciary responsibility to unit owners to protect the common property by assuring that appropriate insurance coverage is in place. This responsibility often includes providing adequate flood insurance to protect buildings located in

SFHAs. A residential condominium association may purchase NFIP insurance coverage on a residential building under the RCBAP. The premium for the policy is usually assessed as part of the unit owner's association dues. A condominium association may opt to purchase flood coverage under the RCBAP, even though individual owners may not have mortgages on their units.

### **a. Residential Condominium Building Association Policy (RCBAP)**

The RCBAP is the policy specifically designed for condominium associations to insure residential condominium buildings. Under the RCBAP, the association is able to manage flood insurance needs and by-law requirements without relying on the actions of the unit owners. The valuation of the property subject to coverage is determined in accordance with Section C.2 of these guidelines.

The Federal mandatory purchase laws apply with equal force to condominium unit owners and their lenders, but the practice of the lending industry, as followed under the RCBAP, is to defer to the association to ensure compliance. A properly placed RCBAP is deemed to satisfy the Reform Act's escrow requirement. Although the association does not bear mortgage responsibility on the individual units, its interest springs from the obligation to maintain and repair the premises for the community benefit and unit owners as tenants in common. A key feature of the condominium insurance format is the separate ownership and mortgaging of individual units, yet the insuring of the building as a whole is with a policy issued to

the association only. Because the RCBAP provides flood insurance coverage protection for both the unit and the common elements of common buildings, the security interests of individual unit owner mort-gagees should be protected, so long as coverage amounts reflect insurance to value, as with other forms of property insurance.

A unit owner's mortgage lender has no direct interest in an RCBAP and is not to be named an additional named insured.

### **(1) Evidence of Compliance**

Upon the making, increasing, extending, or renewing of a loan on the unit and as frequently as required, a unit owner and the insurance agent should advise the unit's mortgagee of the RCBAP's existence to ensure that a mortgagee is aware that the mandated insurance requirement is being met.

The unit owner or the producer may provide the mortgagee evidence of the RCBAP by supplying a copy of the declarations page documenting the specific dollar amount of coverage. If a unit owner's mortgagee determines that the coverage purchased under the RCBAP is insufficient to meet the mandatory purchase requirements, it can request the borrower to ask the association to carry adequate limits, or require purchase of a separate unit owner's building coverage policy. The assessment coverage under the Dwelling Policy form will respond when there is no RCBAP, or when the building insured by the RCBAP is insured to 80 percent of the replacement cost and when a loss exceeds this amount.

### **(2) Coverage**

Under an RCBAP, the entire building is covered under one policy, including both common and individually owned building elements within the unit, improvements within the unit, and personal property owned in common if contents coverage is carried. The RCBAP does not protect the individual owner from loss to personal property owned exclusively by the unit owner.

The NFIP prohibits duplication of NFIP policies on the same risk. As described below, both an association and a unit owner may obtain NFIP coverage, but the unit owner's coverage is proscribed in that it is in excess of the association policy. The RCBAP is primary in relation to the unit owner's policy.

### **(3) Policy Limits**

The maximum amount of building coverage that can be purchased on a high-rise or low-rise condominium under the RCBAP is the replacement cost value of the building or the total number of units in the condominium building times \$250,000, whichever is less. The maximum allowable contents coverage is the actual cash value of the commonly owned contents up to a maximum of \$100,000 per building.

### **(4) Coinsurance Provision**

The RCBAP encourages an association to purchase coverage in an amount equal to at least 80 percent of the replacement cost of the building or to the maximum amount of coverage available under the NFIP, in order to avoid the coinsurance penalty. If that threshold is met, the NFIP agrees to pay 100 percent of all compensable partial losses up to the limits of the policy minus any

deductible. When an association carries limits to full replacement cost value, the unit owner does not need to obtain supplemental building coverage to cover a potential assessment in a total loss situation. The RCBAP's coinsurance provision requires a condominium association to carry NFIP coverage exclusively to comply with the insurance-to-value provisions.

Lenders must be aware of the coinsurance clause that applies if the association has not obtained appropriate coverage. To the extent the association has not purchased NFIP coverage in an amount equal to the lesser of 80 percent or more of the full replacement cost of the building at the time of loss, or the maximum amount of insurance available under the NFIP, the insured will not be reimbursed fully for a loss. Building coverage purchased under individual dwelling policies cannot be added to RCBAP coverage in order to realize the 80-percent requirement. The amount of loss in such a situation will be determined in accordance with the policy's coinsurance formula.

### **b. Dwelling Policy**

A unit owner can acquire supplemental building coverage to the RCBAP by purchasing a unit policy under a Dwelling Policy form that is written in excess of the association policy. The policies are coordinated such that the Dwelling Policy purchased by the unit owner responds to shortfalls on building coverages pertaining either to improvements owned by the insured or to assessments.

Assessment coverage, which is available under the unit Dwelling Policy, applies when the building covered by the RCBAP is insured to 80 percent of replacement cost. The assessment coverage under the Dwelling Policy

form will respond only to that part of a loss that exceeds 80 percent of replacement cost.

This assessment coverage also applies to common elements of any other insured building of the condominium association that is insured under the NFIP in an amount equal to the actual cash value of the other insured building. Loss payments, including assessment coverage, cannot exceed the maximum building coverage permitted for the building under the 1994 Reform Act. Assessment coverage also applies, up to the building coverage limits of the Dwelling Policy purchased, when there is no association policy (RCBAP).

Personal property owned by individual unit owners must be insured under an individual unit owner's Dwelling Policy.

### **c. General Property Policy**

To purchase coverage under the NFIP on a nonresidential condominium building, a condominium association must use the General Property Policy form. Both building and contents coverages are available separately, in amounts up to \$500,000 per nonresidential building. The nonresidential unit owner also may purchase contents coverage using this policy.

In addition, a condominium association must use the General Property Policy form to purchase coverage on a residential building located in a participating Emergency Program community.

## **2. Cooperative Associations**

The NFIP offers coverage for cooperatives through the General Property Policy form, with a maximum amount of building coverage up to \$250,000 available to a residential cooperative.

The entity that owns the cooperative, not the various unit members, is the named insured. A cooperative cannot be insured under the RCBAP.

## **3. Timeshares**

NFIP coverage of timeshares is directly related to the jurisdiction's property ownership rights, as influenced by state law. The jurisdictions generally can be divided into two categories:

- Fee or real-estate ownership
- Non-fee interest, such as right-to-use.

States with fee ownership number slightly more than half of the jurisdictions.

In a fee-ownership jurisdiction, a timeshare is considered similar to a condominium. Therefore, the RCBAP is the required policy form for residential timeshares if the risk otherwise meets the underwriting requirements. That is, a timeshare unit owner must hold an interest similar to that of a condominium unit owner to be eligible for coverage under the RCBAP. If a timeshare is eligible for an RCBAP, it is precluded from being insured under a General Property Policy. A fee-ownership timeshare requires coverage placed through the timeshare's association on the RCBAP form. As with a condominium, lenders may consider the RCBAP policy, with the association as the named insured, as complying with the mandatory purchase requirements.

In a non-fee jurisdiction, the title remains with the building owner who has the full insurable interest in the real property, not with the unit occupants. In this situation, a General Property Policy form must be used for the building. The non-fee simple form of ownership is very similar to a cooperative, where no deed is held by the unit owner.



### **4. Secondary Market**

In their selling guides for purchase of mortgages on condominium units, Fannie Mae and Freddie Mac specifically address the requirement of property coverage. These GSEs also recognize flood coverage carried by the association as complying with the mandatory purchase requirements.

#### **a. Fannie Mae**

Fannie Mae will accept building coverage provided under a Dwelling Policy form to supplement inadequate coverage carried by an association if the association carries 80 percent of replacement cost coverage on the condominium. If a condominium association declines to carry any flood insurance coverage, then each unit owner may purchase an individual policy to comply with Fannie Mae's requirements. The Fannie Mae guide also states that unless a higher maximum deductible amount is required by state law, the maximum allowable deductible is the higher of \$1,000 or 1 percent of the face amount of the policy.

#### **b. Freddie Mac**

Freddie Mac's guidelines are more restrictive than those required by the statute; it will not purchase loans on condominium units unless the association insures to full replacement value of all improvements. The policy deductible cannot exceed the higher of \$1,000 or 1 percent of the policy's insurance limits.

### **E. KEY PROVISIONS**

The preceding sections of these guidelines discuss specific provisions of the 1994 Reform Act and regulations as they apply to an individual borrower or policyholder. This section describes how certain key provisions of

the 1994 Reform Act are to be implemented within the lending industry.

#### **1. Tripwires**

##### **a. Loan Activity**

As stated in the Congressional committee report, Congress views the making, increasing, extending, or renewing of a loan as a "tripwire" for compliance with the flood insurance purchase requirements. This tripwire occurs most frequently upon loan origination, e.g., when a lender knows or has reason to know whether the mandatory purchase requirements apply. Another trigger involves any situation that alerts a lender or servicer to a change in circumstances, e.g., a known map change, or the receipt of a notice to pay the premium to avoid policy expiration.

If a borrower executes a note on improved real estate as collateral for a personal loan, and the lender does not perfect a security interest or mortgage in the building itself, the loan is not a designated loan and, therefore, is not subject to the mandatory purchase requirement.

##### **b. Loan Transfer or Purchase**

The transfer or purchase of a loan among regulated lenders or servicers does not constitute the making of a loan, so it does not trigger the mandatory purchase requirement.

It is the lending regulators' position that deeming a loan purchase as a regulatory tripwire could result in the imposition of duplicative and potentially inconsistent requirements on the seller and purchaser of loans sold in the secondary market. As a condition of purchase, a loan purchaser may require the seller to determine whether the building securing the loan is in an SFHA. The

practice of requiring a seller to make a representation as to compliance with the mandatory purchase requirements also provides additional protection to a loan purchaser. This representation is particularly important when the loans are in communities that have SFHAs.

However, the GSEs do require flood insurance coverage on any loan transferred to or purchased by them. In the Supplementary Information section of the final regulations, the Federal regulators note that both Fannie Mae and Freddie Mac require their respective sellers and servicers to be in full compliance with the flood insurance statutes. See Fannie Mae Announcement No. 95-10 (June 8, 1995) and Freddie Mac Bulletins No. 94-18 (December 8, 1994) and No. 95-3 (March 13, 1995), included as Appendix 7.

Freddie Mac considers its purchase of a loan as serving as a tripwire, while Fannie Mae's guide requires compliance with the mandatory purchase requirements at the time of loan origination. Consequently, an originator or intermediate holder of a loan will be constrained in passing on a loan that does not meet the criteria of the GSE sales guides. An entity not directly covered by the Reform Act, such as a mortgage banker, will be indirectly required to satisfy the statutory flood insurance requirements if it or any subsequent party attempts to sell mortgage loans to Fannie Mae or Freddie Mac. An unregulated mortgage bank that extends a designated loan without flood insurance will be unable to pass that loan on to the GSE market.

In addition, although a conventional loan may be extended in a nonparticipating community, a lender may find it cannot pass the loan onto Fannie Mae and Freddie Mac. The GSEs have restated they will not buy mortgages secured by properties in nonparticipating communities if

they are located in an SFHA. However, they will accept loans in nonparticipating communities that have not been mapped. The quality control measures instituted by the GSEs set the standard for the industry, even for transactions to private investors who are outside the GSE market.

When any loan is sold and servicing is transferred to the new servicer, notice of the identity of the new servicer must be provided to FEMA's designee.

### **c. Portfolio Review**

A look-back or retroactive loan portfolio review, as well as a review made on a prospective basis, which may disclose uninsured risks, is encouraged but not required by the law. The 1994 Reform Act contains no express or implied language that obligates a regulated lender to review its portfolio of existing loans. Under GSE criteria, a lender or servicer is required to monitor loans sold to the GSE.

The 1994 Reform Act encourages lenders and servicers to develop policies and procedures to ensure that, when a determination has been made that a building securing a loan is located in an SFHA, coverage is obtained, or, if necessary, force placed. The lender or servicer also must ensure that a policy does not lapse after it has been placed at loan origination.

FEMA/FIA encourages a mortgagee or servicer to require the purchase of flood insurance at any time during the term of the loan when the lender determines that the building or mobile home is located in an SFHA. This position is intended to ensure that buildings located in SFHAs are covered by flood insurance, regardless of whether the area is designated as an SFHA by the Director of

FEMA before or after the loan is originated. For example, when a community or area is remapped by FEMA, buildings that were not located in an SFHA at the time the mortgage was made may later be identified to be in an SFHA.

A lender is notified of remapping through publication in the Federal Register of map change information pertaining to an individual community, or through a compendium that lists all changes during a specific time period. FEMA also offers a subscription service (for a fee) that provides information on map changes every 2 weeks. Some flood zone determination companies provide the service of monitoring map changes that influence the status of loans.

Apart from the requirements mandated on origination of a loan, a regulated lender need only review and take action on any part of its existing portfolio, i.e., "look forward," for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage. However, scheduled periodic reviews that track the need for flood insurance on loan portfolios are encouraged. The 1994 Reform Act does require lenders to check the status of security property for loans when triggered by the statutory tripwires. But the Reform Act did not add remappings to the list of statutory tripwires. Neither the Reform Act nor the agencies' regulations require lenders to monitor for map changes.

The GSE sales guides have broader requirements than the 1994 Reform Act in requiring lenders to continually monitor map changes and changes in community status under the program.

### **2. Safety and Soundness**

Federal lending regulators view adequate flood insurance coverage as an important factor in measuring the safety and soundness of a lending

institution that extends loans in at-risk areas. The existence of flood insurance is a component of prudent underwriting and protects the lender's ongoing interest in its collateral. Each lender must tailor its flood insurance risk management procedures to suit its particular circumstances. The Federal regulators encourage lenders to evaluate and modify their flood insurance programs as needed to comport with both the mandatory purchase requirements and principles of safe and sound banking that may be unique to a particular lender.

A lender's flood insurance needs vary widely depending on lending concentrations within the geographic areas it serves. For example, a high prevalence of loans in an SFHA requires particular vigilance. Institutions that are significantly exposed to the risks for which flood insurance is designed to compensate should determine the adequacy of flood insurance coverage by conducting periodic reviews, or reviews triggered by remapping of areas represented in their loan portfolio. Accordingly, a map change in a community that contains a significant number of loans in an SFHA merits a heightened analysis. The same principle applies to a regulated lender's purchase or transfer of existing loans in a community containing a special flood hazard.

In nonparticipating communities, lenders should have procedures in place to ensure that loans on properties in SFHAs where flood insurance is not available do not constitute a large portion of the institution's loan portfolio.

### **3. Table Funding**

The regulations generally follow the RESPA definition in which table funding is defined as a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The typical table-funded transaction

should be considered a loan made, rather than purchased, by the entity that actually supplies the funds, and thus is subject to the mandatory purchase requirements.

Table funding is a mechanism used in the "wholesale" mortgage lending industry for utilizing mortgage brokers in the production of mortgage loans. The brokers who originate the loans are independent contractors not subject to Federal regulatory supervision.

In the typical table funding situation, the party providing the funding reviews and approves the credit standing of the borrower and issues a commitment to the broker or dealer to purchase the loan at the time the loan is originated. Frequently, all loan documentation and other statutorily man-dated notices are supplied by the party providing the funding, rather than the broker or dealer. The funding party provides the original funding "at the table" when the broker or dealer and the borrower close the loan. Concurrent with the loan closing, the funding party acquires the loan from the broker or dealer. Wholesale lenders provide the funds for loan closings and acquire the resulting loans, which they sell into the secondary market. Mortgage brokers receive compensation for surrendering the servicing income stream.

Under the regulations, lenders who provide table funding to close loans originated by mortgage brokers or mobile home dealers, such as described above, are deemed to be making, not purchasing, loans for purposes of the flood insurance requirements. Consequently, mortgage brokers are not obligated to comply with the 1994 Reform Act in these types of transactions. However, if any mortgage brokers are involved in the processing and underwriting of the application, the lender should contractually delegate to them the responsibility to comply with the various notice, form, and purchase requirements of the 1973 Act, thereby

eliminating any duplication of flood determinations and borrower notices.

#### 4. Impact on Servicers

The 1994 Reform Act addresses the role of servicers by sanctioning NFIP-related activities conducted on behalf of regulated lenders.

A servicer, as broadly defined in the 1994 Reform Act (42 U.S.C §4003(a)(11) and §4121(a)(11)), may be a regulated lender or a private entity assisting a lender as an independent contractor. The provisions of the 1994 Reform Act apply to all banking institutions' subsidiaries and service corporations. If a servicer is a subsidiary of a regulated lender, it is included under the purview of the 1994 Reform Act. As discussed in Section C of these guidelines, the activities that apply to servicers include escrow, force placement, and zone determination, as well as the submission and receipt of notices. A servicer is directly involved in NFIP activities as a recipient of notices such as a copy of the borrower's Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance from the lender and the expiration notice from the insurer.

The regulations that address a servicer's activities treat loan servicers as acting on behalf of regulated lending institutions. Under the regulations, loan servicers are to be held answerable for their actions to the lender by means of contract. A lender thus may fulfill its duties under the 1994 Reform Act by imposing its responsibilities on the servicer under a loan service agreement. Accordingly, lenders should include in their loan servicing agreements language ensuring that the servicer will fulfill Federal insurance requirements for escrow, force placement, flood hazard determinations, and the various notices, with conditions for recourse. The Federal regulations state that

where deficiencies are found in existing loan servicing contracts, lenders should revise these agreements to provide for the loan servicer to fulfill Federal flood insurance requirements. It would also be prudent to monitor the activity of servicing agents.

The mandatory purchase provisions do not apply directly to loan originators that are not banking institutions or to servicers that are not acting on behalf of a banking institution. However, these non-bank originators and servicers must see to it that loans they sell or service for a GSE meet the requirements of the 1994 Reform Act. Non-bank (e.g., mortgage broker), nonconforming loan lenders who do not originate for GSEs do not come under the authority of the Reform Act.

### 5. Private Flood Insurance

As part of the notification procedure in making a loan, lenders must inform prospective borrowers of the availability of coverage from private insurers as well as NFIP coverage. However, FIA recognizes the limited availability of flood insurance from the private insurance market.

A lender must consider the suitability of private flood insurance policies only when the mandatory purchase law applies. If NFIP coverage is not available in a particular community, or if the risk is otherwise not eligible for NFIP coverage, e.g., in a nonparticipating community or CBRA area, private flood coverage is an alternative. A lender has more discretion in selecting private flood coverage when NFIP coverage is not available.

When private flood coverage is being considered in lieu of a WYO or Direct NFIP policy, a lender is advised to review the FIA's

criteria for the private insurer and the form of coverage. Specifically:

- (a) The insurer should be licensed, admitted, or otherwise approved to do business in the jurisdiction where the building is located, by the insurance regulator of that jurisdiction, except as indicated in (b) below.
- (b) In the case of nonresidential commercial property insurance issued under a policy of difference in conditions, multiple peril, all risk, or other blanket coverage, it should be sufficient if the insurer is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the jurisdiction where the building is located.
- (c) The private flood insurance policy should include a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal to the insured with respect to the flood insurance coverage. The policy should also state that, to be effective, such notice must be mailed to both the insured and the lender or Federal agency lender, and must include information about the availability of flood insurance coverage under the NFIP.
- (d) The policy should guarantee that the flood insurance coverage, considering deductibles, exclusions, and conditions offered by the insurer, is at least as broad as the coverage under the NFIP policies.
- (e) Lenders should satisfy themselves that a mortgage interest clause similar to that contained in NFIP policies is contained in the policy.

An insurance policy that meets all of the above criteria meets the insurance purchase

requirements of the 1994 Reform Act (42 U.S.C. §4012a). To the extent that the policy differs from the NFIP policy, the differences should be carefully examined before the policy is accepted as sufficient protection under the 1994 Reform Act.

The FIA notice that contains the criteria for non-NFIP underwritten coverage can be found in Appendix 11.

### 6. Regulatory Overview

The 1994 Reform Act expressly incorporates new regulatory sanctions into the law and indirectly influences the potential for civil liability. This subsection addresses the regulatory examinations and administrative sanctions, while Subsection E.7 deals with the issue of civil law liability.

#### a. Regulatory Examinations

As part of the 1994 Reform Act, Congress established a task force charged with studying the extent to which the Federal regulatory agencies and the secondary market enforce the 1994 Reform Act. The agencies are required to report their findings to Congress. Accordingly, lenders and servicers can continue to expect onsite examination by the regulatory entity primarily responsible for the supervision of the institution as part of their compliance examinations. Similarly, the GSEs will be reviewed by their oversight agency and must conduct a review of their sellers. The examination procedures may include reviewing a sampling of loan files.

The examiners may perform the following activities:

- Review an institution's practices dealing with flood insurance, including a suitable flood zone determination procedure that

includes monitoring renewal of coverage and recordkeeping evidencing compliance.

- Ask for proof of the submission of the Notice to Borrower form.
- Observe whether the timing requirements of the various notices have been met.
- Verify that the proper amount of coverage was placed in effect at the time of origination and remains in force throughout the renewal periods, with the lender shown as the mortgagee or loss payee on the policy.
- Check that the lender follows appropriate procedures when an area is reclassified because of a map revision.
- Confirm that a lender or servicer exercises force placement if there is failure to escrow or to continue a policy in effect.

The regulatory examinations will be tailored to the activities of the institution under review. For example, if an institution purchases servicing rights, the examination probably will include a review of the contractual obligations placed on the institution by the owner of the loans. Similarly, if the institution utilizes a third party to service loans, the contract with the third party may be reviewed to ascertain that the flood insurance requirements are identified and the compliance responsibilities are adequately addressed. If the institution transfers servicing of loans to another servicer, it must show it provided notice of the new servicer's identity to the FEMA designee within the prescribed timeframe.

If the institution utilizes a third party to perform flood zone determinations, it can expect a review of its contractual provisions to verify that compliance requirements are identified and

covered, including the extent of the third party's guarantee of work.

Relevant parts of the Federal Financial Institutions Examination Council's (FFIEC) Examination Policies and Procedures can be found in Appendix 12.

### **b. Regulatory Penalties**

Under the 1994 Reform Act, Congress for the first time designated a specific range of regulatory civil penalties that may be imposed administratively when it is found that a "pattern or practice of committing violations" has occurred.

The new law does provide penalties related to covered loans on which a lender fails to:

- Place insurance,
- Escrow flood premium on applicable loans,
- Provide notice requirements pertaining to involved loans, or
- Force place the insurance

in such a way that constitutes a "pattern or practice of committing violations" giving rise to an assessable event, 42 U.S.C. §4012a(f) and (g). Similar provisions exist with respect to GSEs.

The individual penalty amount is \$350 per violation, while the aggregate amount of penalties per year that may be assessed

against each institution may reach \$100,000. Penalties assessed will be deposited in the National Flood Mitigation Fund created by the 1994 Reform Act (42 U.S.C. §4104d). Other remedial sanctions consist of unsatisfactory bank ratings, memoranda of understanding, and ultimately, cease and desist orders being issued against lending institutions. In coordination with the FFIEC, the regulatory oversight agencies have amended their uniform rules of practice and procedures to include action taken on the penalty sanctions provisions of the Reform Act.

### **7. Civil Liability**

In legal actions where aggrieved borrowers have instituted actions against lenders for failure to obtain flood insurance coverage, the courts have stated that the mandatory purchase and notice statutes are designed for regulatory purposes to strengthen the NFIP.

The court rulings have concluded that the statute and lender regulations are not intended to make "incidental beneficiaries" of aggrieved borrowers who find themselves without NFIP coverage on flood-damaged structures located in an SFHA. In the past, the courts have ruled that the mandatory purchase statute grants no "implied private cause of action" on behalf of borrowers, enabling them to automatically recover based on the failure of a lender to comply with the 1973 Act. Courts have agreed with the lenders that the intent of the law is to promote sound land use management and lessen the payments made from the Federal Treasury for disaster assistance, as well as to protect the lenders themselves.

## GLOSSARY

This list of terms is intended to include those that have specific meaning to the National Flood Insurance Program (NFIP). In a few instances, standard industry terms have been added for additional focus and emphasis.

**Act**--The National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and the Reform Act of 1994, as amended. The 1994 Reform Act is sometimes referred to as the Riegle amendments to the Act.

**Actual Cash Value (ACV)**--The replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

**Administrator**--The Federal Insurance Administrator, who is charged with implementing the Federal National Flood Insurance Program (NFIP).

**Agent**--One who solicits, negotiates, or effects contracts of insurance on behalf of an insurer, including a WYO insurer. An agent who produces "direct" business is deemed the agent of the insured, not the Federal Government.

**Base Flood**--The flood that has a 1-percent probability of being equaled or exceeded in any given year (also referred to as 100-year flood).

**Base Flood Elevation (BFE)**--The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

**Blanket Insurance**--A single amount of insurance applying to more than one building and/or contents. Blanket coverage is not permitted under the NFIP.

**Building (Eligible Building)**--A structure that is separated from other buildings by intervening clear space or solid, vertical, load-bearing division walls; is walled and roofed; is principally above ground and affixed to a permanent site, including a building in the course of construction, alteration, or repair, and

a manufactured (mobile) home on a foundation; as well as a building that is located in a participating community and has not been declared by a state or local government to be in violation of its floodplain management requirements. Under the NFIP, only one policy may be issued per building.

**Building in the Course of Construction**--A walled and roofed building that is principally above ground and affixed to a permanent site. It does not include building materials or supplies intended for use in such construction, alteration, or repair unless such materials or supplies are within an enclosed building on the premises.

**Cancellation**--Termination of a contract of insurance by a voluntary act of the insurer or insured effected in accordance with the terms and conditions of the insurance contract or legal mutual agreement. NFIP cancellations with a premium refund to the insured for a 1-year or a 3-year policy are limited to those conditions spelled out in the policy and the *Flood Insurance Manual*.

**Chattel Mortgage**--A mortgage on personal property; the creation of a lien as security on chattel that, for purposes of the NFIP, includes contents items as well as a mobile home.

**Civil Money Penalties**--Administrative sanctions lenders incur if they do not comply with the 1994 National Flood Insurance Reform Act. For a single violation of the statute, the penalty is \$350. No institution can incur more than \$100,000 per year in penalties.

**Coastal Barrier**--A naturally occurring island, sandbar, or other strip of land, including coastal mainland, that protects the coast from severe wave wash.

**Coastal Barrier Resources System (CBRS)**--Undeveloped communities, coastal barriers, and other protected areas designated as subject to certain coverage restrictions. These areas were



## Mandatory Purchase of Flood Insurance Guidelines

---

identified by the Coastal Barrier Resources Act of 1982 (CBRA) and the Coastal Barrier Improvement Act of 1990 and are shown on appropriate FIRM panels.

**Coastal High Hazard Areas**--Special flood hazard areas along the coasts that have additional flooding hazards due to wind and wave action. These areas are identified on Flood Insurance Rate Maps as Zones V, V1-V30, and VE.

**Code of Federal Regulations (CFR)**--The codification of the general and permanent rules initially published in the Federal Register by the executive departments and agencies of the Federal Government.

**Coinurance**--This provision reduces the loss payment if the insured does not carry coverage equal to at least 80 percent of the replacement cost of the damaged building.

**Community**--A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

**Community Identification Number**--A 6-digit designation identifying each NFIP community. The first two numbers are the state code. The next four are the FIA-assigned community number. An alphabetical suffix is added to a community number to identify revisions in the Flood Insurance Rate Map (FIRM) for that community.

**Community Rating System (CRS)**--A program developed by FIA to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

**Compendia of Flood Map Changes**--Every 6 months, the Director publishes separately in their entirety within a compendium, all changes and revisions to flood insurance map panels and all letters of map amendment and letters of map revision for which notice was published in the Federal Register or otherwise provided during the preceding 6 months. The Director shall make such compendia available, free of charge, to Federal entities for lending

regulation, Federal agency lenders, and States and communities participating in the National Flood Insurance Program and at cost to all other parties.

**Condominium**--A system of individual ownership of units in a multi-unit building or buildings or in single-unit buildings in which each unit owner has an undivided interest in the common areas of the building(s) and facilities that serve the building(s).

**Condominium Association**--A corporation made up of owners of the condominium buildings. The condominium association is responsible for (1) the operation and (2) the adoption and enforcement of rules or bylaws that govern the owners of the condominium buildings.

**Conforming Loan**--A mortgage loan that meets all the requirements (size, type, and age) to be eligible for purchase or securitization by a Government Sponsored Enterprise (GSE).

**Conventional Loan (Financing)**--Real estate mortgage extended by a lender where the loan is not insured or guaranteed by a government agency such as HUD/FHA, VA, or the Farmers Home Administration.

**Cooperative**--A unit owner holds an interest in property by contract or share, but owns no title to the building itself. The NFIP does not issue a dwelling policy to unit owners. The cooperative corporation, who owns the land and improvements, has the insurable interest in the building and is eligible to obtain a general property form of coverage.

**Deductible**--The portion of an insured loss to be borne by the insured before the insured is entitled to recovery from the insurer. The NFIP applies the deductible separately to the building and contents portion of a loss covered by the Standard Flood Insurance Policy (SFIP). The standard deductible is \$500 for building and \$500 for contents. Other deductible amounts are available, and special deductibles apply to the expense of contents and manufactured (mobile) home removal. (See *Flood Insurance Manual*.)

## Federal Emergency Management Agency

---

**Deductible Buyback**--For an additional premium, policyholders who wish to reduce their deductibles from the standard deductible of \$1,000 for Pre-FIRM risks may opt to purchase separate \$500 deductibles for building and contents coverages.

**Depreciation**--A decline in value of a building or other real estate improvement, resulting from age, physical wear, or functional obsolescence.

**Designated Loan**--A loan secured by a building or mobile home located or to be located in a Special Flood Hazard Area (SFHA) where flood insurance is available under the 1968 Act.

**Determination Review**--An appeal process performed by FEMA to resolve disputes posed by borrowers and lenders/servicers concerning properties found to be in SFHAs. A fee of \$80 is charged, and the request must be signed jointly by the lender or servicer and borrower. Elevation data is not considered. Requestor receives a Letter of Determination Review if structure is found inside or outside an SFHA.

**Director**--The Director of the Federal Emergency Management Agency.

**Dwelling Form**--See Standard Flood Insurance Policy--Dwelling Form.

**Elevated Building**--A non-basement building that has its lowest elevated floor raised above the ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**Elevation Certificate**--A certified statement that verifies a building's elevation information. The information required and the risks subject to these requirements are contained in the Special Certification section of the *Flood Insurance Manual*.

**Emergency Program**--Typically the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable buildings in that community before the effective date of the initial Flood Insurance Rate Map (FIRM).

**Escrow Requirement**--Under the National Flood Insurance Reform Act of 1994, a mandatory requirement was placed on federally regulated lending institutions to escrow for flood insurance premiums (under certain restrictions).

**Evidence of Insurance**--A copy of the Flood Insurance Application, premium payment, and declarations page submitted to the lender is sufficient evidence of proof of purchase. The NFIP does not recognize an oral binder or contract of insurance.

**Expense Constant**--A flat charge per policy term, paid by the insured to defray the federal government's policy-writing and other expenses.

**Farm Credit Administration**--This federal agency regulates service corporations organized under the Farm Credit Act. FCA regulates approximately 236 lending institutions or servicing entities.

**Federal Agency Lenders**--These include the Small Business Administration, Federal Housing Administration, and the Department of Veterans Affairs, which are subject to the Mandatory Purchase Requirement in the Reform Act. These agencies, not newcomers to the purchase requirement, were covered by the 1973 Act.

**Federal Deposit Insurance Corporation**--This federal agency regulates state-chartered and insured "nonmember banks," that are not part of the Federal Reserve System. FDIC regulates approximately 6,250 banks.

**Federal Emergency Management Agency (FEMA)**--The federal agency under which the National Flood Insurance Program (NFIP) is administered.

**Federal Home Loan Mortgage Corporation (Freddie Mac)**--This privately owned, federally chartered agency purchases loans (usually for residential, 1-4 family unit dwellings) from lenders as part of the secondary market. See also GSE.

**Federal Insurance Administration (FIA)**--The federal entity within FEMA that directly administers the National Flood Insurance Program (NFIP).

**Federal National Mortgage Association (Fannie Mae)**--This privately owned, federally chartered agency acts in a similar fashion to Freddie Mac. Together, Fannie Mae and Freddie Mac are the primary investors in the secondary market. See also GSE.

**Federal Policy Fee**--Mandated by the Congress to provide funds to meet those administrative

## Mandatory Purchase of Flood Insurance Guidelines

---

expenses such as federal floodplain management expenses, the cost of flood insurance risk zone and flood elevation studies, and funds to purchase high risk properties to remove them from the insurance rolls. This fee is not subject to producers' commissions, WYO Company expense allowances under the Financial Assistance/Subsidy Arrangement, or state or local premium taxes. The Federal Policy Fee is charged for all new and renewal policies.

**Federal Register**--The document, published daily by the U.S. Government, that presents regulations and legal notices issued by Federal agencies, including proposed and final BFE determinations.

**Federally Regulated Lending Institutions**--Any banks, savings and loan associations, credit unions, farm credit banks, Federal land bank associations, production credit associations, or similar institutions subject to the supervision of a Federal entity for lending regulation, such as the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Reserve System (FRS), the Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA).

**FHBM**--See Flood Hazard Boundary Map.

**Financial Assistance/Subsidy Arrangement**--The arrangement between a WYO insurance company and the Administrator to initiate a company's participation in the WYO Program. It establishes the duties of the company and the government.

**FIRM**--See Flood Insurance Rate Map.

**Five-Hundred Year Flood (500-Year Flood)** -- The flood that a 0.2 percent chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate to low risk of flooding. Includes flood Zones B, C, and X. One- to four-unit buildings in these zones are eligible for Preferred Risk Policies. A 500-year flood would be deeper than a 100-year flood and would cover a greater area.

**Flood**--A general and temporary condition of partial or complete inundation of normally dry land areas from:

- Overflow of inland or tidal waters.

- The unusual and rapid accumulation or runoff of surface waters from any source.
- Mudslides (i.e., mudflows) which are proximately caused by flood, as defined above, and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flood, as defined above.

**Flood Hazard Boundary Map (FHBM)**--Initial map of a community issued by the Administrator, where the boundaries of the flood areas having special hazards have been identified, based on approximate analyses.

**Flood Insurance Manual (Agent's Manual)**--This manual conveys a comprehensive description of the NFIP for insurance agents, including use of forms when placing business, rating methods, and an explanation of policy rules.

**Flood Insurance Rate Map (FIRM)**--Official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**Flood Map Status Subscription Service**--Service through which FEMA sells information about community status, map effective dates, etc., on diskette or microfiche.

**Floodplain**--Any land area susceptible to being inundated by flood waters from any source.

**Floodplain Management**--The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodproofing Certificate**--In certain circumstances, Floodproofing Certificates can be issued

## Federal Emergency Management Agency

---

as an alternative to elevating buildings to or above the base flood elevation.

**Flood Zone**--See SFHA. Zones that begin with the letters V and A are in the SFHA. Zones B, C, D, or X are within the floodplain but not in the SFHA and, therefore, are not considered to be areas requiring flood insurance for structures located in those areas.

**Flood Zone Determination Vendor**--An organization that makes zone determinations on individual properties and monitors map changes.

**General Property Form**--See Standard Flood Insurance Policy--General Property Form.

**Government Sponsored Enterprises (GSEs)** -- Regulated by the Office of Federal Housing Enterprise. Oversight of the Department of Housing and Urban Development (i.e., Federal National Mortgage Association (FNMA [Fannie Mae]), Federal Home Loan Mortgage Corporation (FHLMC [Freddie Mac]), and Government National Mortgage Association (GNMA [Ginnie Mae])).

**GSE**--See Government Sponsored Enterprises.

**Improved Real Estate**--Property on which a building is located or will be located.

**Increased Cost of Compliance Endorsement**--Coverage for expenses a property owner must incur, above and beyond the cost to repair the physical damage the building actually sustained from a flooding event, to comply with State or local floodplain management ordinances or laws. Acceptable mitigation measures are elevation, floodproofing, relocation, demolition, or any combination thereof. All renewal and new business policies with effective dates on or after June 1, 1997, will include ICC coverage. Policyholders with 3-year policies have options of canceling their flood insurance policies on the anniversary dates and obtaining coverage under rewritten policies.

**Letter of Determination Review (LODR)**--FEMA's official letter in response to a joint request for review of a lender's flood hazard determination. The LODR either overturns the lender's finding, upholds it, or leaves it un-changed because insufficient information was provided.

**Letter of Map Amendment (LOMA)**--An official amendment, by letter, to an effective NFIP map. A

LOMA establishes a property's location in relation to the SFHA.

**Letter of Map Change Subscription Service** -- Service through which FEMA provides updates of all LOMAs and LOMRs twice monthly, charging \$2,000 for annual subscriptions.

**Letter of Map Revision (LOMR)**--An official revision, by letter, to an effective NFIP map. A LOMR may change flood insurance risk zones, floodplain boundary delineations, planimetric features, and/or BFEs.

**Letter of Map Revision Based on Fill (LOMR-F)**--An official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

**Loan Portfolio**--A collection of loans held for servicing or investment.

**LODR**--See Letter of Determination Review.

**LOMA**--See Letter of Map Amendment.

**LOMR**--See Letter of Map Revision.

**LOMR-F**--See Letter of Map Revision Based on Fill.

**Mandatory Purchase**--Under the provisions of the Flood Disaster Protection Act of 1973, individuals, businesses, and others buying, building, or improving property located in identified areas of special flood hazards within participating communities are required to purchase flood insurance as a prerequisite for receiving any type of direct or indirect federal financial assistance (e.g., any loan, grant, guaranty, insurance, payment, subsidy, or disaster assistance) when the building or personal property is the subject of or security for such assistance.

**Manufactured (Mobile) Home**--A building transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured (mobile) home" does not include a "recreational vehicle."

## Mandatory Purchase of Flood Insurance Guidelines

---

**Map Panel Number**--Four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised.

**Map Amendment**--A change to an effective NFIP map that results in the exclusion from the Special Flood Hazard Area (SFHA) of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first NFIP map that showed the structure or parcel to be within the SFHA).

**Map Revision**--A change to an effective NFIP map that is accomplished by a LOMR or a PMR.

**Mobile Home**--See Manufactured (Mobile) Home.

**Mortgage Portfolio Protection Program (MPPP)**--A program designed to assist lending institutions to maintain compliance with the Flood Disaster Protection Act of 1973, as amended. Policies written under the MPPP can be placed only through a WYO Company.

**National Credit Union Administration**--This Federal agency regulates credit unions that are federally insured.

**National Flood Insurance Program (NFIP)**--A Federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry. The NFIP encourages state and local governments to exercise sound floodplain management to reduce losses caused by flood.

**NFIP Bureau and Statistical Agent**--A corporation, partnership, association, or any other organized entity that contracts with the Federal Insurance Administration to be the focal point of support operations for the NFIP.

**NFIP Servicing Agent**--A corporation, partnership, association, or any other organized entity that contracts with the Federal Insurance Administration to service insurance policies as direct business.

**Nonparticipating Community**--A community in which the sale of flood insurance is not authorized

because the community chooses not to participate in the NFIP.

**Non-Residential**--Includes, but is not limited to: small business concerns, churches, schools, farm buildings (including grain bins and silos), poolhouses, clubhouses, recreational buildings, mercantile structures, agricultural and industrial structures, warehouses, and hotels or motels with normal room rentals for less than 6 months' duration.

**Office of the Comptroller of the Currency (OCC)**--This entity regulates approximately 3,000 national banks under the Department of the Treasury.

**Office of Thrift Supervision (OTS)**--This body regulates Federal and state savings associations, savings banks, their wholly-owned subsidiaries, and savings and loan holding companies. Under the Department of the Treasury, the OTS regulates approximately 1,500 savings institutions.

**One-Hundred Year Flood (100-Year Flood)**--The flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A or V is subject to the 100-year flood. These high-risk zones are also known as Special Flood Hazard Areas (SFHAs). Over the life of a 30-year loan, there is a 26-percent chance of experiencing such a flood within an SFHA.

**Participating Community**--Any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

**Physical Map Revision (PMR)**--An official republication of an NFIP map to show changes to floodplain and/or floodway boundary delineations, BFEs, and planimetric features.

**Post-FIRM Construction**--Construction or substantial improvement that started on or after the effective date of the initial Flood Insurance Rate Map (FIRM) of the community or after December 31, 1974, whichever is later.

**Preferred Risk Policy (PRP)**--A package policy offering nine coverage combinations for both building and contents at a fixed premium. It is available only

to owners of 1-4 family residential buildings located in B, C, and X Zones that meet eligibility requirements based on an entire flood loss history.

**Pre-FIRM Construction**--Construction or substantial improvement which started on or before December 31, 1974, or before the effective date of the initial Flood Insurance Rate Map (FIRM) of the community, whichever is later.

**Probation**--A means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

**Probation Additional Premium**--A flat charge per policy term paid by the Insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

**Real Estate Settlement Procedures Act of 1974 (RESPA)**--Prescribes rules concerning payment and disclosure of settlement service charges. HUD's implementing Regulation Z includes as a "settlement service" the provision of services involving hazard, flood, or other casualty insurance.

**Recreational Vehicle**--A vehicle that is (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections, (3) designed to be self-propelled or permanently towed by a light duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use including, but not limited to, travel trailers, trailers on wheels, park trailers, and other similar vehicles.

**Regular Program**--The phase of a community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a flood insurance study. The FIRM is the map used in this phase of the NFIP.

**Regular Program Community**--A community wherein a FIRM is in effect and full limits of coverage are available under the Act.

**Regulatory Floodway**--The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base

flood without cumulatively increasing the water surface elevation more than a designated height.

**Remapping**--FEMA schedules remapping of communities to take into consideration natural changes within the floodplain and regulatory floodways and to allow for changes as a result of land use and development, land contour changes, and new information gained from advanced technology. Results of FEMA's remapping efforts are published every 6 months in a compendium of flood map changes in the Federal Register.

**Repetitive Loss Structure**--A structure, covered by a contract for flood insurance issued pursuant to the Act, that has incurred flood-related damage on two occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each such flood event.

**Replacement Cost**--The cost to replace property with the same kind of material and construction without deduction for depreciation.

**Residential Condominium Building**--A building owned by the members of a condominium association containing one or more residential units and in which at least 75 percent of the floor area within the building is residential.

**Residential Condominium Building Association Policy (RCBAP)**--See Standard Flood Insurance Policy--Residential Condominium Building Association Policy (RCBAP).

**Residential Improved Real Estate**--Improved real estate for which the improvement is a residential building.

**Section 1316**--Section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

## Mandatory Purchase of Flood Insurance Guidelines

---

**Servicer**--The entity responsible for receiving scheduled, periodic payments from a borrower under the terms of a loan, including principal, interest, and any other payments as may be required under the terms of the loan. The servicer may also be the lender.

**SFHA**--See Special Flood Hazard Area.

**Small Loan**--Any loan having an original principal balance of \$5,000 or less and a repayment term of 1 year or less.

**Special Flood Hazard Area (SFHA)**--Darkly shaded area on a Flood Insurance Rate Map (FIRM) or a Flood Hazard Boundary Map (FHBM) that identifies an area that has a 1-percent chance of being flooded in any given year (100-year floodplain). Over a 30-year period, the life of most mortgages, there is at least a 26-percent chance that this area will be flooded. The FIRM identifies these shaded areas as FIRM Zones A, AO, AH, A1-A30, AE, A99, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V, V1-V30, and VE.

**Standard Flood Hazard Determination Form (SFHDF)**--FEMA's form 81-93, to be used by all companies performing determinations, in either printed, computerized, or electronic forms. A completed form or "certificate" is required in most loan files and is the primary "product" of most Flood Zone Determination companies.

**Stafford Act**--Precludes further disaster relief benefits on property where the owners have not obtained and maintained the required flood insurance coverage after receiving Federal assistance for repairs to property damaged by initial flooding.

**Standard Flood Insurance Policy--Dwelling Form**--Policy issued to insure a building and/or residential contents on a single family or a 2-4 family dwelling.

**Standard Flood Insurance Policy--General Property Form**--Policy issued to insure a building and/or contents on other residential or non-residential buildings.

**Standard Flood Insurance Policy--Residential Condominium Building Association Policy (RCBAP)**--Policy issued to insure an entire residential condominium building (i.e., a condominium building wherein at least 75 percent of

the total floor area is residential), including all units within the building. It is available only to residential condominium associations that are located in Regular Program communities.

**State-Owned Property**--Property that does not require flood insurance if it is covered under an adequate State policy of self-insurance satisfactory to the Director of FEMA.

**Structure**--See Building.

**Suspension**--Removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

**Table Funding**--Typically, a loan transaction where the party providing the funding ordinarily reviews and approves the credit standing of the borrower and issues a commitment to the broker to purchase the loan at the time the loan is originated.

**Tentative Rates**--Unpublished NFIP rates used to issue policies for applications that fail to provide the NFIP with valid actuarial rating information.

**Third-Party Flood Zone Determination Companies**--Vendors who, for a fee, determine the flood zone classification of a property. If a lender/servicer uses one of these companies for flood zone determinations, the results must be guaranteed for accuracy. (See Flood Zone Determination Vendor.)

**Time Shares**--Property interests that generally fall into one of two categories, either (1) fee or real estate ownership, or (2) non-fee interest, such as the right to use. A timeshare organized on a fee simple basis is eligible for the RCBAP policy. A non-fee simple timeshare can obtain the GP form. Different policy coverage applies according to property interest.

**Tripwire**--An action that alerts lenders and servicers to comply with flood insurance requirements in the case of the making, increasing, extending, or renewing of a loan, or the transfer of a loan to a GSE.

**Waiting Period**--The time between the date of application and the policy effective date.

## **Federal Emergency Management Agency**

---

**Write Your Own (WYO) Program**--A cooperative undertaking of the insurance industry and the Federal Insurance Administration begun in October 1983. The WYO Program operates within the context of the NFIP and involves private insurance carriers who issue and service National Flood Insurance Program policies.

**WYO Vendor**--An organization employed by certain WYO carriers to conduct support operations to procure, produce, and handle NFIP claims on behalf of the insurer.

**Zone**--A geographical area shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map that reflects the severity or type of flooding in the area.



## Index

### A

Abundance of caution .....	20
Acquisition .....	31-32
Actual cash value .....	24, 42
Administrative sanctions.....	49
Agricultural lending.....	25
Assessments .....	42-43
Assignment of policy .....	35-36

### B

Base flood .....	7
Base flood elevation.....	6, 8-9
Buildings in the course of construction.....	25-26

### C

Calculating coverage.....	23-24
Chattel mortgage.....	26
Civil liability .....	50
Coastal Barrier Resources Act (CBRA).....	18, 48
Coinurance .....	42
Commercial loans .....	36
Community Rating System.....	6
Condominium associations .....	40-43
Contents coverage.....	27
Contested determinations.....	13-15
Conventional loans.....	17, 18
Cooperative associations .....	43, App. 10
Covered loan.....	22

### D

Declarations page .....	41
Deductible .....	24-25
Department of Veterans Affairs (VA).....	16, 17, 22, 30
Determination fee.....	11-12
Determination review.....	13-16
Determining location of a building .....	10-12, 32-34
Difference in conditions.....	48
Direct Program.....	2
Direct side servicing agent.....	31
Disaster assistance .....	4, 17, 18, App. 4
Duplication.....	42
Dwelling Policy.....	24, 42-43

### E

Elevation Certificate.....	26
Emergency Program.....	6-7
Escrow exclusions.....	37
Escrow requirements .....	35-37
Expiration Notice.....	32, App. 4

### F

Fannie Mae.....	4, 17, 21-22, 44, 45, App. 7
Federal agencies .....	19, 20-21
Federal agency lenders.....	3-4, 19, 22
Federal Deposit Insurance Corporation.....	20, App. 2
Federal Financial Institutions Examination Council .....	21, 50, App. 12
Federal Home Loan Mortgage Corporation .....	<i>see</i> Freddie Mac
Federal Housing Administration (FHA).....	16, 17, 22, 30
Federal National Mortgage Association .....	<i>see</i> Fannie Mae
Federally regulated lenders.....	19, 20-21
Fees .....	11-12, 13
Fee ownership .....	43
FFIEC.....	<i>see</i> Federal Financial Institutions Examination Council
FHA .....	<i>see</i> Federal Housing Administration
FHBM.....	<i>see</i> Flood Hazard Boundary Map
Finance charge.....	12
Financial assistance.....	17
FIRM .....	<i>see</i> Flood Insurance Rate Map
Flood Disaster Protection Act of 1973 .....	2-3
Flood Hazard Boundary Map.....	6, 7
Flood Insurance Manual.....	22, 39, 40
Flood Insurance Rate Map .....	6, 7, 23
Flood maps .....	6, 7
Flood zone determination companies .....	11, 12, 46
Force placement.....	4, 37-40
Freddie Mac .....	4, 17, 21-22, 44, 45, App. 7

### G

General Property Policy .....	24, 43
Government National Mortgage Association (Ginnie Mae) .....	21
Government-Sponsored Enterprises (GSEs).....	4, 19, 21-22, 44, 45, App. 7
Guarantees.....	11, 33

### H

High-value land .....	25
Home equity mortgages .....	27-29, 38
HUD Good Faith Estimate .....	12
HUD-1 Settlement statement .....	12

### I

Improved real estate.....	1, 23
Increased Cost of Compliance (ICC) coverage.....	24
Ineligible buildings.....	17-19
Initial purchase.....	34
Insurance-to-value provisions.....	42-43
Inventory .....	27

## Mandatory Purchase of Flood Insurance Guidelines

### L

Land loan only .....	25
Land not insurable .....	23
Legal references .....	App. 1
Lender regulations .....	App. 2
Letter of Determination Review (LODR) .....	15
Letter of Map Amendment (LOMA) .....	8
Letter of Map Revision (LOMR) .....	8-9
Letter of Map Revision Based on Fill (LOMR-F) .....	8
Life-of-loan .....	11, 12, 37
Limits available .....	22-23, 42
Line of credit .....	28
Loan activity .....	44
Loan transfer or purchase .....	44-45
Low-value building .....	25

### M

Mandatory Purchase Requirement .....	2-5
Manufactured home .....	26-27
Map availability .....	9-10
Map changes .....	9, 46
Map issues .....	7-10
Map Service Center .....	10, App. 5
Merger .....	31, 32
Mobile homes .....	26-27
Mortgage brokers .....	47
Mortgage Portfolio Protection Program (MPPP) .....	39, App. 9

### N

National Flood Insurance Act of 1968 .....	1-2, App. 1
National Flood Insurance Program .....	1-2, App. 5
National Flood Insurance Reform Act of 1994 .....	3-5
National Flood Mitigation Fund .....	50
New construction .....	25-26
Nonconforming loan lenders .....	48
Non-fee interest .....	43
Nonparticipating communities .....	16-19, 48
Notice requirements .....	4, 17, 29-32, App. 4
Expiration Notice .....	32, App. 4
Notice to Borrower form .....	16, App. 4
Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance .....	29-30, App. 4
Notification of Change of Servicer .....	30-32, App. 4

### P

Participating communities .....	5-16
Payment .....	13-14
Penalties .....	50
Periodic reviews .....	45-46

Personal property .....	27
Policy issuances (interpretations) .....	34, App. 8, App. 10, App. 11
Portfolio review .....	45-46
Preferred Risk Policy .....	5, 9
Previous determination .....	11, 33
Primary lienholder .....	28
Private flood insurance .....	40, 48-49, App. 11
Private mortgage lenders .....	20

### R

RCBAP .....	<i>see</i> Residential Condominium Building Association Policy
Real Estate Settlement Procedures Act (RESPA) .....	26-27, 35-36
Recreational vehicle .....	26
Regular Program .....	7
Regulated lending institutions .....	21
Regulation Z .....	12-13
Regulators .....	3, 36
Regulatory examinations .....	49-50, App. 12
Regulatory penalties .....	50
Regulatory sanctions .....	49
Remapping .....	9, 46
Replacement cost value .....	24, 42
Residential Condominium Building Association Policy .....	24, 41-42
RESPA .....	<i>see</i> Real Estate Settlement Procedures Act
Restricted coverage areas .....	17-19
Review request .....	13-15

### S

Safety and soundness .....	46
Second mortgages .....	27-29, 38
Secondary lienholder .....	28
Secondary market .....	43-44
Section 1316 properties .....	18-19
Service corporations .....	21
Servicers .....	45, 47-48
SFHA .....	<i>see</i> Special Flood Hazard Area
SFHDF .....	<i>see</i> Standard Flood Hazard Determination Form
Small Business Administration (SBA) .....	16, 22, 30
Small loan exception .....	29
Small loan exemption .....	40
Special Flood Hazard Area (SFHA) .....	1-2, 7
Stafford Act .....	17
Standard Flood Hazard Determination Form .....	10, 14, 32-34, App. 6
State-owned property .....	40
Statutory provisions .....	App. 3
Subscription service .....	46

Subsidiaries .....	21
Surcharge .....	6
Surplus lines insurer.....	48
Suspended communities .....	6

### **T**

Table funding .....	46-47
Third-party vendor .....	10-11
Timeshares .....	43, App. 10
Tripwires.....	5, 44-46
Truth in Lending Act.....	12

### **U**

Underinsurance .....	27
Underwriting restrictions .....	17-18
Unregulated mortgage bankers .....	20
Unregulated private financial institutions.....	20

### **V**

Violations.....	18-19, 50
Voluntary escrowing.....	37

### **W**

Waiting Period (WYO) .....	34-35, App. 8
30-day waiting period.....	34-35, 38, App. 8
Exceptions .....	34-35, App. 8
45-day waiting period.....	38, 39
Write Your Own Program.....	2
WYO insurers .....	2, 31

### **Z**

Zones (Flood zones for mapping and rating purposes) .....	7
--	---

### **LEGAL REFERENCES**

This appendix references and describes the legal citations of the mandatory purchase sections of the National Flood Insurance Act. The statutory history and authority of various aspects of the Flood Act that pertain to the mandatory purchase provisions are covered.

#### **Federal Insurance Administration & Office of the Administrator**

As presently administered, the NFIP is carried out under the auspices of the Federal Emergency Management Agency (FEMA) and its subsidiary agency, the Federal Insurance Administration (FIA). The FIA was initially established under the Housing and Urban Development Act of 1968 as part of the United States Department of Housing and Urban Development (HUD). The agency is headed by the Federal Insurance Administrator, an office authorized by the Urban Property Protection and Reinsurance Act of 1968 (Title XI of the Housing and Urban Development Act of 1968). In 1978, President Carter issued the Reorganization Plan No. 3 of the 1978 (43 FR 41493), creating FEMA, and transferred the functions authorized and described in the National Flood Insurance Act of 1968 and the position of Federal Insurance Administrator to FEMA. The organization of FEMA was further defined in Executive Order 12127, dated March 31, 1979 (44 FR 19367), and Executive Order 12148, dated June 20, 1979. On April 1, 1979, in a notice published in 44 FR 20962, and later codified at 44 CFR §2.64, the Director of FEMA delegated responsibility for the administration of the NFIP to the Federal Insurance Administrator of the FIA, which had become a Directorate within FEMA. The authorization of the Program itself can be found at 42 U.S.C. sec. 4011.

#### **The National Flood Insurance Program**

The National Flood Insurance Act, which created the National Flood Insurance Program (NFIP), is codified in the United States Code at 42 U.S.C. 4001 *et seq.* The original act became effective on January 28, 1969, authorized by the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, as amended, Public Law 90-448, 82 Stat 476). The NFIP is a federally subsidized insurance program that provides flood insurance at or below actuarial rates. The legislative history states Congress created the program because flood insurance was not available from private insurance companies, who were unable to write flood insurance policies on an economically feasible basis. H. Rep. No. 90-1585, 90th Cong., 2d Sess., *reprinted in*, 1968 U.S. Code Cong. & Ad. News 2873, 2965-73; S. Rep. No. 90-1123, 90th Cong., 2d Sess. (1968).

As of October 1, 1983, FEMA instituted what is called the Write Your Own (WYO) Program, whereby private homeowners insurers are also authorized to market NFIP flood coverage in conjunction with property insurance. See 62 CFR Sub-Part C, § 62.23. With the WYO Program, FEMA functions similarly to a reinsurer in accepting the risk of the primary WYO insurer on the line of NFIP business written by the companies. FEMA continues to directly bear the risk for the “direct” insurance program while serving as a guarantor of WYO insurers on WYO business.

Contrary to the practice of the private insurance industry, the NFIP accepts all applicants and is not selective in evaluating an individual applicant for NFIP coverage. There is no individual risk analysis, i.e., underwriting, conducted to determine the likelihood of a future loss. The sole criteria involving whether an applicant will be accepted as an insured involves whether or not the community, in which the property is located, participates in the NFIP, 42 U.S.C. §4012; if so, the property is then rated in accordance with its zone and other criteria such as amount of coverage requested. The NFIP is a "take all comers" insurance entity. Premiums paid are deposited by the Director of FEMA to a National Flood Insurance Fund, 42 U.S.C. 4017(b)(2), which may be augmented when necessary by funds borrowed from the United States Treasury and by appropriations, 42 U.S.C. 4016, 4017(b)(1),(3).

The insurance regulations set out the terms and conditions of flood insurance coverage and rates. All flood insurance made available under the program is subject to the express terms and conditions of the insurance policy, the statute, and the governing regulations, 44 C.F.R. 61.4(a).

The Standard Flood Insurance Policy (SFIP) is set forth at 44 C.F.R. 61, Appendix A(1). The SFIP is a single peril policy that covers flood only and limits coverage both under the insuring clause as well as the exclusions. The regulations prohibit alteration, variation, or waiver of the policy provisions, 44 C.F.R. 61.13(d). The Director is charged with interpreting the meaning of the policy, 44 C.F.R. 61.14(b).

Other statutory references to the Act and its relevant amendments include the National Flood Insurance Act of 1968 (title 13 of the Housing and Urban Development Act of 1968), Pub. L. No. 90-448, 82 Stat. 476(1968) (codified at 42 U.S.C. 4001-4128); the Housing and Urban Development Act of 1969, Pub. L. No. 91-152, 83 Stat. 397 (1969) (codified at 12 U.S.C. section 1703); and the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234, 87 Stat. 975 (1973). The 1994 amendments were accomplished as part of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub.L. 103-325, Title V, 108 Stat. 2257-2260 et.seq., generally referred to as the Reform Act.

### The Mandatory Purchase Provisions

The mandatory purchase requirement first appeared in the Flood Disaster Protection Act of 1973. At that time the law required purchase of flood insurance as a condition of obtaining a mortgage loan from federally regulated lending institutions for properties in identified floodprone areas as well as a condition in obtaining federal assistance. The restriction on federal assistance included the receipt of federally related financing by private lending institutions as well as VA and FHA loans. Since flood insurance was available only in communities participating in the National Flood Insurance Program, the result of this legislation was a great increase in the number of communities participating in the program and in the number of policies in force.

The strict 1973 mandatory purchase amendments, however, were met with some criticism. Continuing pressure from contractors and real estate developers resisting the limits on lending and federal assistance to nonparticipating communities resulted in a 1977 amendment that modified §4106 (b) by deleting the original wording which prohibited private regulated lending in nonparticipating communities and in its

place substituted a notice requirement. This change has come to be known by the name of its sponsor as "The Eagleton Amendment." The 1977 Eagleton amendment was enacted by Pub.L 95-128, Title VII, sec. 703(a), Oct 12, 1977. This amendment deleted from the Act its original § 4106 (b) requirement that Federal regulators issue regulations prohibiting lenders from making conventional loans with respect to property in nonparticipating communities. The notice requirement is contained in the Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance. Consequently, lenders regulated by, or whose deposits are insured by, federal instrumentalities may now make conventional loans secured by mortgages on improved real property and mobile homes in areas of special flood hazard in communities that are not participating in the NFIP. They may do so notwithstanding the fact that such property is not eligible for the purchase of National Flood Insurance, and, thus, the mandatory flood insurance purchase requirement does not apply with respect to such loans. However, lenders should carefully evaluate the underwriting risk involved in making such loans. In nonparticipating communities, a lender may require private flood insurance, if available. The notice requirements do not apply to unsecured loans, or to loans secured by improved real property that is not located in an SFHA.

Among other things, the 1977 change, in the short-term, benefited developers who now can obtain federally guaranteed money for floodplain development, but in the long-term works to the detriment of the ultimate, and perhaps unsuspecting, future owner of the structure at the time a flood may occur. The possibility of flood damage is in addition to what could be an excessively high premium in the future if the structure is constructed below "base flood elevation" and the community subsequently joins the program as a participating community.

The mandatory purchase law directs the Federal lending regulators and Government Sponsored Enterprises (GSEs) to adopt regulations requiring lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located in an area of special flood hazard in a community that is eligible for the purchase of National Flood Insurance, if the building, mobile home, and any personal property securing such loan, is to be the security for the loan.

Each Federal Regulatory Agency and GSE has the right to issue its own regulations to implement the Act, and the authority of the FIA is limited to its statutory responsibility of administering the NFIP. The FIA is not an agency with direct responsibility for implementing enforcement of the mandatory flood insurance purchase requirements of the Act.

### The 1994 Amendments to the Program

The Riegle Community Development and Regulatory Improvement Act, Pub. L. 103-325, 108 Stat. 2160 (Reform Act), was signed into law on September 23, 1994. As described in these guidelines, the new law substantially amends the existing mandatory purchase provisions.

The flood insurance provisions of the Act require the OCC, Board, FDIC, OTS, and NCUA to revise their current flood insurance regulations. The FCA is required to promulgate flood insurance regulations for the first time. The six agencies issued their regulations jointly in order to fulfill the statutory requirements. All six of the agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as is required by certain of the Reform Act flood insurance provisions. The CFR citation and reference number of the location of the regulations for the various lender agencies are as follows:

Office of the Comptroller of the Currency (OCC); 12 CFR Part 22  
Office of Compliance Specialist (202/874-4858)

Office of Thrift Supervision (OTS); 12 CFR Parts 563 and 572  
Office of Compliance and Trust (202/906-5628)

Federal Reserve System (FRS); 12 CFR Part 208  
Office of Review Examiner (202/452-3946)

Federal Deposit Insurance Corporation (FDIC); 12 CFR Part 339  
Office of Consumer Affairs Specialist (202/942-3631)

Farm Credit Administration (FCA); 12 CFR Part 614  
Office of Examination (703/883-4498)

National Credit Union Administration (NCUA); 12 CFR Part 760  
Office of Examination and Insurance (703/518-6375)

**FDIC REGULATIONS**

Federal Deposit Insurance Corporation  
12 CFR CHAPTER III  
Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC revises part 339 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

**PART 339--LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS**

- 339.1 Authority, purpose, and scope.
- 339.2 Definitions.
- 339.3 Requirement to purchase flood insurance where available.
- 339.4 Exemptions.
- 339.5 Escrow requirement.
- 339.6 Required use of standard flood hazard determination form.
- 339.7 Forced placement of flood insurance.
- 339.8 Determination fees.
- 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
- 339.10 Notice of servicer's identity.

Appendix A to Part 339--Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

**Sec. 339.1 Authority, purpose, and scope.**

- (a) Authority. This part is issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.
- (b) Purpose. The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).
- (c) Scope. This part, except for Secs. 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.



### **Sec. 339.2 Definitions.**

- (a) Act means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001-4129).
- (b) Bank means an insured state nonmember bank and an insured state branch of a foreign bank or any subsidiary of an insured state nonmember bank.
- (c) Building means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.
- (d) Community means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.
- (e) Designated loan means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.
- (f) Director of FEMA means the Director of the Federal Emergency Management Agency.
- (g) Mobile home means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term mobile home does not include a recreational vehicle. For purposes of this part, the term mobile home means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the NFIP.
- (h) NFIP means the National Flood Insurance Program authorized under the Act.
- (i) Residential improved real estate means real estate upon which a home or other residential building is located or to be located.
- (j) Servicer means the person responsible for:
  - (1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums and other charges with respect to the property securing the loan; and
  - (2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

- (k) Special flood hazard area means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.
- (l) Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

### **Sec. 339.3 Requirement to purchase flood insurance where available.**

- (a) In general. A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.
- (b) Table funded loans. A bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

### **Sec. 339.4 Exemptions.**

The flood insurance requirement prescribed by Sec. 339.3 does not apply with respect to:

- (a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or
- (b) Property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

### **Sec. 339.5 Escrow requirement.**

If a bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the bank shall also require the escrow of all premiums and fees for any flood insurance required under Sec. 339.3. The bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account

statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the bank, or a servicer acting on behalf of the bank, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

### **Sec. 339.6 Required use of standard flood hazard determination form.**

- (a) Use of form. A bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.
- (b) Retention of form. A bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

### **Sec. 339.7 Forced placement of flood insurance.**

If a bank, or a servicer acting on behalf of the bank, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under Sec. 339.3, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under Sec. 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

### **Sec. 339.8 Determination fees.**

- (a) General. Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129), any bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.
- (b) Borrower fee. The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:
  - (1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

- (2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;
  - (3) Reflects the Director of FEMA's publication of a notice or compendium that:
    - (i) Affects the area in which the building or mobile home securing the loan is located; or
    - (ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or
  - (4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under Sec. 339.7.
- (c) Purchaser or transferee fee. The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

**Sec. 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.**

- (a) Notice requirement. When a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.
- (b) Contents of notice. The written notice must include the following information:
  - (1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;
  - (2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));
  - (3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

- (4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.
- (c) Timing of notice. The bank shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.
- (d) Record of receipt. The bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.
- (e) Alternate method of notice. Instead of providing the notice to the borrower required by paragraph (a) of this section, a bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.
- (f) Use of prescribed form of notice. A bank will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

### **Sec. 339.10 Notice of servicer's identity.**

- (a) Notice requirement. When a bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director of FEMA's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.
- (b) Transfer of servicing rights. The bank shall notify the Director of FEMA (or the Director of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

**EXCERPTS OF RELEVANT STATUTORY PROVISIONS OF 42 U.S.C**

Section 4012a **Flood insurance purchase and compliance requirements and escrow accounts**  
(This section of the U.S. Code includes the following sections of the 1994 Reform Act, Public Law sections, 531,582, 522, 523-526.).

(a) **omitted**

(b) **Requirement for Mortgage Loans**

(1) **Regulated lending institutions**

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less.

(2) **omitted**

(3) **Government-sponsored enterprises for housing**

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall implement procedures reasonably designed to ensure that, for any loan that is:

- (A) secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and
- (B) purchased by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

(4) **omitted**

**(a) Exceptions to purchase requirements**

**(1) State-owned property**

Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Director. The Director shall publish and periodically revise the list of States to which this subsection applies.

**(2) Small loans**

Notwithstanding any other provision of this section, subsections (a) and (b) shall not apply to any loan having-

(A) an original outstanding principal balance of \$5,000 or less; and

(B) a repayment term of 1 year or less.

**(d) Escrow of Flood Insurance Payments**

**(1) Regulated lending institutions**

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home, then all premiums and fees for flood insurance under the National Flood Insurance Act of 1968 for the real estate or mobile home shall be paid to the regulated lending institution or other servicer for the loan in a manner sufficient to make payments as due for the duration of the loan. Upon receipt of the premiums, the regulated lending institution or servicer of the loan shall deposit the premiums in an escrow account on behalf of the borrower. Upon receipt of a notice from the Director or the provider of the insurance that insurance premiums are due, the regulated lending institution or servicer shall pay from the escrow account to the provider of the insurance the amount of insurance premiums owed.

**(2) omitted**

**(3) Applicability of RESPA**

Escrow accounts established pursuant to this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974.

### **(4) Definition**

For purposes of this subsection, the term "residential improved real estate" means improved real estate for which the improvement is a residential building.

### **(5) Applicability**

This subsection shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

### **(e) Placement of Flood Insurance by Lender**

#### **(1) Notification to borrower of lack of coverage**

If, at the time of origination or at any time during the term of a loan secured by improved real estate or by a mobile home located in an area that has been identified by the Director (at the time of the origination of the loan or at any time during the term of the loan) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, the lender or servicer for the loan determines that the building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by such insurance in an amount less than the amount required for the property pursuant to paragraph (1), (2), or (3) of subsection (b), the lender or servicer shall notify the borrower under the loan that the borrower should obtain, at the borrower's expense, an amount of flood insurance for the building or mobile home and such personal property that is not less than the amount under subsection (b)(1), for the term of the loan.

#### **(2) Purchase of coverage on behalf of borrower**

If the borrower fails to purchase such flood insurance within 45 days after notification under paragraph (1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the insurance.

#### **(3) Review of determination regarding required purchase**

##### **(A) In general**

The borrower and lender for a loan secured by improved real estate or a mobile home may jointly request the Director to review a determination of whether the building or mobile home is located in an area having special flood hazards. Such request shall be supported by technical information relating to the improved real estate or mobile home. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide to the borrower and the lender with a letter stating whether or not the building or mobile home is in an area having special flood hazards. The determination of the Director shall be final.



### **(B) Effect of determination**

Any person to whom a borrower provides a letter issued by the Director pursuant to subparagraph (A), stating that the building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title to require the purchase of flood insurance for such building or mobile home during the period determined by the Director, which shall be specified in the letter and shall begin on the date on which such letter is provided.

### **(C) Effect of failure to respond**

If a request under subparagraph (A) is made in connection with the origination of a loan and the Director fails to provide a letter under subparagraph (A) before the later of (i) the expiration of the 45-day period under such subparagraph, or (ii) the closing of the loan, no person shall have an obligation under this title to require the purchase of flood insurance for the building or mobile home securing the loan until such letter is provided.

### **(4) Applicability**

This subsection shall apply to all loans outstanding on or after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

### **(f) Civil Monetary Penalties for Failure To Require Flood Insurance or Notify**

#### **(1) Civil monetary penalties against regulated lenders**

Any regulated lending institution that is found to have a pattern or practice of committing violations under paragraph (2) shall be assessed a civil penalty by the appropriate Federal entity for lending regulation in the amount provided under paragraph (5).

#### **(2) Lender violations**

The violations referred to in paragraph (1) shall include-

- (A)** making, increasing, extending, or renewing loans in violation of-
  - (i)** the regulations issued pursuant to subsection (b) of this section;
  - (ii)** the escrow requirements under subsection (d) of this section; or
  - (iii)** the notice requirements under section 4104a (1364) of the National Flood Insurance Act of 1968; or
- (B)** failure to provide notice or purchase flood insurance coverage in violation of subsection (e) of this section.

### **(3) Civil monetary penalties against GSE's**

#### **(A) In general**

If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3), the Director of such Office shall assess a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.

#### **(B) Definition**

For purposes of this subsection, the term "enterprise" means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

### **(4) Notice and hearing**

A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.

### **(5) Amount**

A civil monetary penalty under this subsection may not exceed \$350 for each violation under paragraph (2) or paragraph (3). The total amount of penalties assessed under this subsection against any single regulated lending institution or enterprise during any calendar year may not exceed \$100,000.

### **(6) Lender compliance**

Notwithstanding any State or local law, for purposes of this subsection, any regulated lending institution that purchases flood insurance or renews a contract for flood insurance on behalf of or as an agent of a borrower of a loan for which flood insurance is required shall be considered to have complied with the regulations issued under subsection (b) of this section.

### **(7) Effect of transfer on liability**

Any sale or other transfer of a loan by a regulated lending institution that has committed a violation under paragraph (1), that occurs subsequent to the violation, shall not affect the liability of the transferring lender with respect to any penalty under this subsection. A lender shall not be liable for any violations relating to a loan committed by another regulated lending institution that previously held the loan.

### **(8) Deposit of penalties**

Any penalties collected under this subsection shall be paid into the National Flood Mitigation Fund under section 4104 (§ 1367) of the National Flood Insurance Act of 1968.

### **(9) Additional penalties**

Any penalty under this subsection shall be in addition to any civil remedy or criminal penalty otherwise available.

### **(10) Statute of limitations**

No penalty may be imposed under this subsection after the expiration of the 4-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this subsection.

## **(g) Other Actions To Remedy Pattern of Noncompliance**

### **(1) Authority of federal entities for lending regulation**

A Federal entity for lending regulation may require a regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution complies with the requirements of the national flood insurance program if the Federal agency for lending regulation makes a determination under paragraph (2) regarding the regulated lending institution.

### **(2) Determination of violations**

A determination under this paragraph shall be a finding that-

- (A) the regulated lending institution has engaged in a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b), (d), or (e) or the notice requirements under section 4104a (§ 1364) of the National Flood Insurance Act of 1968; and
- (B) the regulated lending institution has not demonstrated measurable improvement in compliance despite the assessment of civil monetary penalties under subsection (f).

## **(h) Fee for Determining Location**

Notwithstanding any other Federal or State law, any person who makes a loan secured by improved real estate or a mobile home or any servicer for such a loan may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

**(1) Borrower fee**

The borrower under such a loan may be charged the fee, but only if the determination-

- (A) is made pursuant to the making, increasing, extending, or renewing of the loan that is initiated by the borrower;
- (B) is made pursuant to a revision or updating under section 4101(f), §1360(f) of the floodplain areas and flood-risk zones or publication of a notice or compendia under subsection (h) or (i) of section 4101 (f) that affects the area in which the improved real estate or mobile home securing the loan is located or that, in the determination of the Director, may reasonably be considered to require a determination under this subsection; or
- (C) results in the purchase of flood insurance coverage pursuant to the requirement under subsection (e)(2).

**(2) Purchaser or transferee fee**

The purchaser or transferee of such a loan may be charged the fee in the case of sale or transfer of the loan.

**NOTICE PROVISIONS OF THE STATUTE**

Section 4104a **Notice requirements** (This section of the U.S. Code includes public law section 527 of the 1994 Reform Act)

(a) **Notification of Special Flood Hazards**

(1) **Regulated lending institutions**

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the Director under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations shall also require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

(2) **omitted**

(3) **Contents of notice**

Written notification required under this subsection shall include-

- (A) a warning, in a form to be established by the Director, stating that the building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;
- (B) a description of the flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act of 1973 [42 U.S.C.A. § 4012a (b)];
- (C) a statement that flood insurance coverage may be purchased under the national flood insurance program and is also available from private insurers; and
- (D) any other information that the Director considers necessary to carry out the purposes of the national flood insurance program.

### **(b) Notification of Change of Servicer**

#### **(1) Lending institutions**

Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1), to notify the Director (or the designee of the Director) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Director (or such designee) of any change in the servicer of the loan, not later than 60 days after the effective date of such change. The regulations under this subsection shall provide that upon any change in the servicing of a loan, the duty to provide notification under this subsection shall transfer to the transferee servicer of the loan.

#### **(2) omitted**

### **(c) Notification of Expiration of Insurance**

The Director (or the designee of the Director) shall, not less than 45 days before the expiration of any contract for flood insurance under this title, issue notice of such expiration by first class mail to the owner of the property covered by the contract, the servicer of any loan secured by the property covered by the contract, and (if known to the Director) the owner of the loan.

Section 4104b **Standard hazard determination forms** (This section of the U.S. Code includes public law section 528 of the 1994 Reform Act)

**(a) Development**

The Director, in consultation with representatives of the mortgage and lending industry, the Federal entities for lending regulation, the Federal agency lenders, and any other appropriate individuals, shall develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director as an area having special flood hazards and in which flood insurance under this title is available. The form shall be established by regulations issued not later than 270 days after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

**(b) Design and Contents**

**(1) Purpose**

The form under subsection (a) shall be designed to facilitate compliance with the flood insurance purchase requirements of this title.

**(2) Contents**

The form shall require identification of the type of flood-risk zone in which the building or mobile home is located, the complete map and panel numbers for the improved real estate or property on which the mobile home is located, the community identification number and community participation status (for purposes of the national flood insurance program) of the community in which the improved real estate or such property is located, and the date of the map used for the determination, with respect to flood hazard information on file with the Director. If the building or mobile home is not located in an area having special flood hazards the form shall require a statement to such effect and shall indicate the complete map and panel numbers of the improved real estate or property on which the mobile home is located. If the complete map and panel numbers are not available because the building or mobile home is not located in a community that is participating in the national flood insurance program or because no map exists for the relevant area, the form shall require a statement to such effect. The form shall provide for inclusion or attachment of any relevant documents indicating revisions or amendments to maps.

**(c) Required Use**

The Federal entities for lending regulation shall by regulation require the use of the form under this section by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the form with respect to any loan made by such Federal agency lender. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by

such entities. A lender or other person may comply with the requirement under this subsection by using the form in a printed, computerized, or electronic manner.

**(d) Guarantees Regarding Information**

In providing information regarding special flood hazards on the form developed under this section, any lender (or other person required to use the form) who makes, increases, extends, or renews a loan secured by improved real estate or a mobile home may provide for the acquisition or determination of such information to be made by a person other than such lender (or other person), only to the extent such person guarantees the accuracy of the information.

**(e) Reliance on Previous Determination**

Any person increasing, extending, renewing, or purchasing a loan secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards (and shall not be liable for any error in such previous determination), if the previous determination was made not more than 7 years before the date of the transaction and the basis for the previous determination has been set forth on a form under this section, unless-

- (1) map revisions or updates pursuant to section 4101(f), 1360(f) after such previous determination have resulted in the building or mobile home being located in an area having special flood hazards; or
- (2) the person contacts the Director to determine when the most recent map revisions or updates affecting such property occurred and such revisions and updates have occurred after such previous determination.

**(f) Effective Date**

The regulations under this section requiring use of the form established pursuant to this section shall be issued together with the regulations required under subsection (a) and shall take effect upon the expiration of the 180-day period beginning on such issuance.



## **Federal Emergency Management Agency**

---

### Appendix A to Part 339--Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community: \_\_\_\_\_. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

☐ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover the lesser of:
  - (1) the outstanding principal balance of the loan; or
  - (2) the maximum amount of coverage allowed for the type of property under the NFIP.Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.
- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

☐ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood

## **Mandatory Purchase of Flood Insurance Guidelines**

---

hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

By order of the Board of Directors.

Dated at Washington, D.C., this 13th day of August, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley, Executive Secretary

**Federal Emergency Management Agency  
Washington, D.C. 20472**

June 4, 1996

**NOTIFICATION OF CHANGE OF SERVICER**

The National Flood Insurance Reform Act (NFIRA) requires federally regulated lending institutions and Federal agency lenders to report changes of Servicer. Section 1364 of the National Flood Insurance Act of 1968, as amended by Section 527 of NFIRA, provides in paragraph (b)(1) that:

"Each Federal entity ... shall by regulation require lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subsection (a)(1), to notify the Director **(or the designee of the Director)** in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Director **(or such designee)** of any changes in the servicer of the loan, not later than 60 days after the effective date of such change." [Emphasis added]

**The Federal Emergency Management Agency is requesting that all notices be sent to the Write Your Own company (insurance carrier issuing flood policy) or agent of record to endorse the flood policy to change the mortgagee or servicer.**

In order to expedite the processing, please submit the following information to the insurance company:

Borrower's Full Name  
Flood Insurance Policy Number  
Property Address (including city/state)  
Name of Bank or Servicer Reporting the Change  
Name/Telephone Number of Contact Person  
Name and Address of New Mortgagee of Servicer  
Name/Telephone Number of Contact Person

**NFIP Assistance Directory**

<b><u>NUMBER</u></b>	<b><u>LOCATION</u></b>	<b><u>SERVICE</u></b>
800-638-6620	NFIP Servicing Agent	Direct business
301-731-5300	NFIP Bureau & Statistical Agent	Lender training
800-720-1093	NFIP Telephone Response Center	Agent information and leads
800-427-4661	NFIP Telephone Response Center	General information
800-611-6125	NFIP Telephone Response Center	Lender information
800-427-5593	NFIP Telephone Response Center	TDD
800-358-9616 FAX 800-358-9620	FEMA Map Service Center	Order flood maps, Community Status Book
877-336-2627 (877-FEMA-MAP)	FEMA Flood Hazard Map Hotline	Information on flood maps and procedures to revise/correct FIRMs
800-564-8236	NFIP Co-op Advertising Program	Eligibility information
800-480-2520	FEMA Publications Center	Mandatory Purchase Guidelines, other publications, forms

**Mandatory Purchase of Flood Insurance Guidelines**

---

<a href="http://www.fema.gov/NFIP">www.fema.gov/NFIP</a>	FEMA/NFIP Website	Public information
--	-------------------	--------------------

**NFIP Bureau and Statistical Agent  
Regional Offices**

---

**NFIP Bureau Region I**

140 Wood Rd., Suite 200  
Braintree, MA 02184  
(781) 848-1908  
FAX (781) 356-4142  
(CT, ME, MA, NH, RI, VT)

**NFIP Bureau Region II**

33 Wood Avenue, S., Suite 600  
Iselin, NJ 08830  
(732) 603-3875  
FAX (732) 321-6562  
(NJ, NY)

**NFIP Bureau Region III**

Building T, Suite 9  
1930 E. Marlton Pike  
Cherry Hill, NJ 08003  
(609) 489-4003  
FAX (609) 751-2817  
(DE, DC, MD, PA, VA, WV)

**NFIP Bureau Region IV**

Suite 200, Offices B & C  
1532 Dunwoody Village Parkway  
Dunwoody, GA 30338  
(770) 396-9117  
FAX (770) 396-7730  
(AL, FL, GA, KY, MS, NC,  
SC, TN)

**NFIP Bureau Region V**

1111 E. Warrenville Rd., Suite 209  
Naperville, IL 60563  
(630) 577-1407  
FAX (630) 577-1437  
(IL, IN, MI, MN, OH, WI)

**NFIP Bureau Region VI**

Suite 304  
11931 Wickchester Road  
Houston, TX 77043  
(281) 531-5990  
FAX (281) 531-5992  
(AR, LA, NM, OK, TX)

**NFIP Bureau Region VII**

Suite 13-B  
601 N. Mur-Len Road  
Olathe, KS 66061  
(913) 780-4238  
FAX (913) 780-4368  
(IA, KS, MO, NE)

**NFIP Bureau Region VIII**

Suite 300  
2801 Youngfield Street  
Golden, CO 80401  
(303) 275-3475  
FAX (303) 275-3471  
(CO, MT, ND, SD, UT, WY)

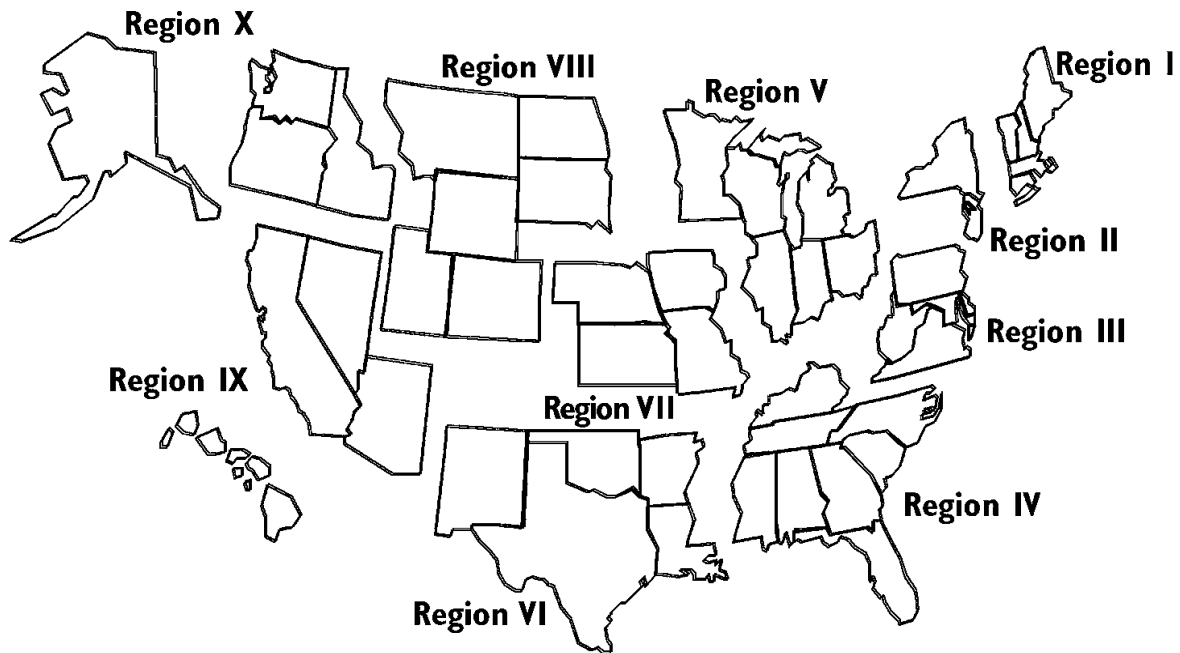
**NFIP Bureau Region IX**

5777 Madison Avenue, Suite 810  
Sacramento, CA 95841  
(916) 334-1720  
FAX (916) 334-1676  
(AZ, CA, GU, HI, NV)

**NFIP Bureau Region X**

Suite 116  
1611 116th Avenue, N.E.  
Bellevue, WA 98004  
(425) 646-4908  
FAX (425) 646-3096  
(AK, ID, OR, WA)

## **NFIP Regions**



FEDERAL EMERGENCY MANAGEMENT AGENCY  
**STANDARD FLOOD HAZARD DETERMINATION**

See The Attached  
Instructions

O.M.B. No. 3067-0264  
Expires October 31, 2001

**SECTION I - LOAN INFORMATION**

1. LENDER NAME AND ADDRESS		2. COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS (Legal Description may be attached)	
3. LENDER ID. NO.	4. LOAN IDENTIFIER	5. AMOUNT OF FLOOD INSURANCE REQUIRED \$	

**SECTION II**

**A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION**

1. NFIP Community Name	2. County(ies)	3. State	4. NFIP Community Number

**B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE HOME**

1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")	2. NFIP Map Panel Effective/ Revised Date	3. LOMA/LOMR <input type="checkbox"/> yes _____ Date	4. Flood Zone	5. No NFIP Map

**C. FEDERAL FLOOD INSURANCE AVAILABILITY (Check all that apply)**

1. ☐ Federal Flood insurance is available (community participates in NFIP). ☐ Regular Program ☐ Emergency Program of NFIP
2. ☐ Federal Flood insurance is not available because community is not participating in the NFIP.
3. ☐ Building/Mobile Home is in a Coastal Barrier Resources Area (CBRA) or Otherwise Protected Area (OPA), Federal Flood insurance may not be available.  
CBRA/OPA designation date: \_\_\_\_\_

**D. DETERMINATION**

**IS BUILDING/MOBILE HOME IN SPECIAL FLOOD HAZARD AREA  
(ZONES CONTAINING THE LETTERS "A" OR "V")? ☐ YES ☐ NO**

If yes, flood insurance is required by the Flood Disaster Protection Act of 1973.

If no, flood insurance is not required by the Flood Disaster Protection Act of 1973.

**E. COMMENTS (Optional):**

This determination is based on examining the NFIP map, any Federal Emergency Management Agency revisions to it, and any other information needed to locate the building/mobile home on the NFIP map.

**F. PREPARER'S INFORMATION**

NAME, ADDRESS, TELEPHONE NUMBER (If other than Lender)	DATE OF DETERMINATION



**STANDARD FLOOD HAZARD DETERMINATION FORM INSTRUCTIONS**  
**PAPERWORK BURDEN DISCLOSURE NOTICE**

Public reporting burden for FEMA Form 81-93 form is estimated to average 20 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20742; and to the Office of Management and Budget, Paperwork Reduction Project (30676- 0264), Washington, DC 20503.

**SECTION 1**

1. **LENDER NAME:** Enter lender name and address.
2. **COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS:** Enter property address for the insurable collateral. In rural areas, a postal address may not be sufficient to locate the property. In these cases, legal property descriptions may be used and may be attached to the form if space provided is insufficient.
3. **LENDER ID. NO.:** The lender funding the loan should identify itself as follows: FDIC-insured lenders should indicate their FDIC Insurance Certificate Number; Federally-insured credit unions should indicate their charter/insurance number; Farm Credit institutions should indicate their UNINUM number. Other lenders who fund loans sold to or securitized by FNMA or FHLMC should enter the FNMA or FHLMC seller/servicer number.
4. **LOAN IDENTIFIER:** Optional. May be used by lenders to conform with their individual method of identifying loans.
5. **AMOUNT OF FLOOD INSURANCE REQUIRED:** Optional. The minimum federal requirement for this amount is the lesser of: the outstanding principal loan balance; the value of the improved property, mobile home and/or personal property used to secure the loan; or the maximum statutory limit of flood insurance coverage. Lenders may exceed the minimum federal requirements. National Flood Insurance Program (NFIP) policies do not provide coverage in excess of the value of the building/mobile home/personal property.

**SECTION 2**

**A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION**

1. **NFIP Community Name.** Enter the complete name of the community (as indicated on the NFIP map) in which the building or mobile home is located. Under the NFIP, a community is the political unit that has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction. A community may be any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization. (Examples: Brewer, City of; Washington, Borough of; Worchester, Township of; Baldwin County; Jefferson Parish.) For a building or mobile home that may have been annexed by one community but is shown on another community's NFIP map, enter the Community Name for the community with land-use jurisdiction over the building or mobile home.
2. **County(ies).** Enter the name of the county or counties in which the community is located. For unincorporated areas of a county, enter "unincorporated areas". For independent cities, enter "independent city."
3. **State.** Enter the two-digit state abbreviation. (Examples: VA, TX, CA.)
4. **NFIP Community Number.** Enter the 6-digit NFIP community number. This number can be determined by consulting the NFIP Community Status Book or can be found on the NFIP map; copies of either can be obtained from FEMA's Website <http://www.fema.gov> or by calling 1-800-611-6125. If not NFIP Community Number exists for the community, enter "none".

**B. NFIP DATA AFFECTING BUILDING/MOBILE HOME**

The information in this section (excluding the LOMA/LOMR information) is obtained by reviewing the NFIP map on which the building/mobile home is located. The current NFIP map, and a pamphlet titled "Guide to Flood Maps," may be obtained from FEMA by calling 1-800-611-6125. Note that even when an NFIP map panel is not printed, it may be reflected on a community's NFIP map index with its proper number, date, and flood zone indicated; enter these data accordingly.

1. **NFIP Map Number or Community-Panel Number.** Enter the 11-digit number shown on the NFIP map that covers the building or mobile home. (Examples: 480214 0022C; 58103C0075 F.) Some older maps will have a 9-digit number (Example: 12345601A.) Note that the first six digits will not match the NFIP Community Number when the sixth digit is a "C" or when one community has annexed land from another but the NFIP map has not yet been updated to reflect this annexation. When the sixth digit is a "C", the NFIP map is in countywide format and shows the flood hazards for the geographic areas of the county on one map, including flood hazards for incorporated communities and for any unincorporated county contained within the county's geographic limits. Such countywide maps will list an NFIP Map Number. For maps not in such countywide format, the NFIP map will list a Community-Panel Number on each panel. If no NFIP map is in effect for the location of the building or mobile home, enter "none".

2. **NFIP Map Panel Effective/Revised Date.** Enter the map effective date or the map revised date shown on the NFIP map. (Example: 6/15/93.) this will be the latest of all dates shown on the map.

3. **LOMA/LOMR.** If a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) has been issued by FEMA since the current Map Panel Effective/Revised Date that revises the flood hazards affecting the building or mobile home, check "yes" and specify the date of the letter; otherwise, no entry is required. Information on LOMAs and LOMRs is available from the following sources:

- \* The community's official copy of its NFIP map should have a copy of all subsequently-issued LOMAs and LOMRs attached to it.
- \* For LOMAs and LOMRs issued on or after October 1, 1994, FEMA publishes a list of these letters twice a year as a compendium in the Federal Register; This information is also available on FEMA's website at <http://www.fema.gov>.
- \* A subscription service providing digitized copies of these letters on CD-ROM is also available by calling 1-800-358-9616.

4. **Flood Zone.** Enter the flood zone(s) covering the building or mobile home. (Examples: A, AE, A4, AR, AR/A, AR/AE, AR/AO, V, VE, V12, AH, AO, B, C, X, D.) If any part of the building or mobile home is within the Special Flood Hazard Area (SFHA), the entire building or mobile home is considered to be in the SFHA. All flood zones beginning with the letter "A" or "V" are considered Special Flood Hazard Areas (SFHAs). Each flood zone is defined in the legend of the NFIP map on which it appears. If there is no NFIP map for the subject area, enter "none."

5. **No NFIP Map.** If no NFIP map covers the area where the building or mobile home is located, check this box.

C. **FEDERAL FLOOD INSURANCE AVAILABILITY.** Check all boxes that apply; however, note that boxes 1 (Federal Flood Insurance is available...) and 2 (Federal Flood Insurance is not available...) are mutually exclusive. Federal flood insurance is available to all residents of a community that participates in the NFIP. Community participation status can be determined by consulting the NFIP Community Status Book, which is available from FEMA and at <http://www.fema.gov>. The NFIP Community Status Book will indicate whether or not the community is participating in the NFIP and whether participation is in the Emergency or Regular Program. If the community participates in the NFIP, check either Regular Program or Emergency Program. To obtain Federal flood insurance, a copy of this completed form may be provided to an insurance agent.

Federal flood insurance is prohibited in designated Coastal Barrier Resources Areas (CBRA) and Otherwise Protected Areas (OPAs) for buildings or mobile homes built or substantially improved after the date of the CBRA or OPA designation. An information sheet explaining the Coastal Barrier Resources System may be obtained from FEMA by calling 1-800-611-6125.

D. **DETERMINATION:** If any portion of the building/mobile home is in an identified Special Flood Hazard Area (SFHA), check yes (flood insurance is required). If no portion of the building/mobile home is in an identified SFHA, check no. If no NFIP map exists for the community, check no. If no NFIP map exists, Section B5 should also be checked.

F. **PREPARER'S INFORMATION:** If other than the lender, enter the name, address, and telephone number of the company or organization performing the flood hazard determination. An individual's name may be included, but is not required.

**Date of Determination.** Enter date on which flood hazard determination was completed.

## **OTHER INFORMATION**

**MULTIPLE BUILDINGS:** If the loan collateral includes more than one building, a schedule for the additional building(s)/mobile home(s) indicating the determination for each may be attached. Otherwise, a separate form must be completed for each building or mobile home. Any attachment(s) should be noted in the comment section. A separate flood insurance policy is required for each building or mobile home.

**GUARANTEES REGARDING INFORMATION:** Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

**FORM AVAILABILITY:** Copies of this form are available from the FEMA fax-on-demand line by calling (202) 646-FEMA and requesting form #23103. Guidance on using the form in a printed, computerized, or electronic format is contained in form #23110. This information is also available on FEMA's website <http://www.fema.gov>.

**FannieMae**

**No. 95-10**

---

---

## **Announcement**

---

**Reference**

- Selling
- Servicing

This announcement amends the guide(s) indicated. Please keep it for reference until we issue a formal change.

**Subject**                      **Changes to Our Flood Insurance Requirements**

The National Flood Insurance Reform Act of 1994 (the Flood Act), which amends the National Flood Insurance Program, includes several key provisions that affect mortgage lenders and servicers. Among other things, the statute

- authorizes lenders to require flood insurance even if a property's improvements are not designated or determined to be in a Special Flood Hazard Area until after the mortgage is originated;
- allows lenders to charge borrowers reasonable fees for determining the applicability of requiring flood insurance coverage (either at the time a mortgage is originated or later following a subsequent remapping of a locality);
- increases the maximum amount of flood insurance coverage that is available under the National Flood Insurance Program;
- increases lenders' duties related to compliance with the requirements of the National Flood Insurance Program (and imposes civil monetary penalties for the failure to comply); and
- requires the Federal Emergency Management Agency (FEMA) to develop and mandate the use of a standard form to document the flood zone status of a property. (Once FEMA makes this form available, it must be used for all properties that secure mortgages delivered to Fannie Mae.)

Although not all of the provisions imposed by the Flood Act will result to changes in our policy, we expect servicers to nevertheless fully comply with all aspects of the Act. The remainder of this Announcement discusses the specific changes to our mortgage eligibility and loan servicing policies that are required to assure compliance with the Flood Act, as well as other changes that we are

---

Page 1 of 10

---

06/08/95

---

**FannieMae****No. 95-10**

---

---

**Announcement**

---

making to update our requirements. Unless we specify otherwise for a particular change, these changes are effective immediately.

Flood Insurance Requirements Related to Mortgage Deliveries

Part IV, Section 107, of the Selling Guide states that we "require flood insurance for any property located in a Special Flood Hazard Area that has federally mandated flood insurance purchase requirements." It goes on to list the Flood Insurance Rate Map symbols that are used to identify Special Flood Hazard Areas, to explain how the required coverage is calculated, and to discuss the limited circumstances under which flood insurance is not required.

The requirements of Part IV, Section 107, of the Selling Guide that are specifically affected by the provisions of the Flood Act (or that are otherwise being revised) are as follows:

- Special Flood Hazard Areas that now have federally mandated flood insurance purchase requirements include those identified by the following symbols on Flood Insurance Rate Maps -- A, AE, AH, AO, AR, A1-30, A-99, V, VE, V1-30, and VO.
- The Flood Act increased the maximum "per dwelling" coverage available under the National Flood Insurance Program to \$250,000 per dwelling (and to \$100,000 for contents coverage). Our method of calculating the required coverage has not changed as a result of the Flood Act; however, lenders should make sure that any mortgages they deliver to us have adequate flood insurance coverage based on the new maximum coverage limits.
- The National Flood Insurance Program provides coverage for the buildings, dwellings, structures, or improvements that are situated on a property. We previously specified that we would waive our flood insurance requirements if the property improvements were not in the Special Flood Hazard Area, even though part of the property might be. The location of the principal structure is of most importance in terms of determining whether flood insurance is required. Flood insurance is required if any part of the principal structure is located within a Special Flood Hazard Area. Detached buildings -- such as stand-alone garages, sheds, or greenhouses -- are not considered part of the

Page 2 of 10

06/08/95

FannieMae

No. 95-10

---

## Announcement

---

principal structure, although flood insurance may be required for them if they also serve as part of the security for the mortgage. If the principal structure on a property is not located in a Special Flood Hazard Area, flood insurance generally will not be required even if another detached structure is located within the Special Flood Hazard Area. However, if the detached structure is attached to the land and serves as part of the security for the mortgage, flood insurance will be required for the detached structure (and may be purchased through a separate policy on a general property insurance form). (This is not necessary if the lender determines that the principal structure represents sufficient security for the mortgage and releases the detached dwelling from the security.)

Although we do not require flood insurance for buildings that are not the principal structure (unless they are part of the security for the mortgage), borrowers may want to obtain flood insurance coverage for these buildings. Most standard flood insurance policies cover only specific structures or buildings. In order to protect detached buildings that are not the principal structure from damage against floods, a borrower may need to obtain one flood insurance policy for the principal structure and separate policies for the other detached buildings on the property.

- FEMA designates communities as either "participating" or "non-participating" in the National Flood Insurance Program. Under the National Flood Insurance Program, flood insurance is not available for properties that are located in "non-participating" communities. Previously, we specified that we would not buy mortgages secured by properties located in Special Flood Hazard Areas if the community was not participating in the National Flood Insurance Program, although we waived our flood insurance requirement if the mortgage was closed within one year after the area was classified as a Special Flood Hazard Area. Effective immediately, mortgages secured by properties located in "non-participating" communities cannot be sold to us if the property is located in a Special Flood Hazard Area (regardless of when the property was classified as being in a Special Flood Hazard Area). To assure that such mortgages are not delivered to us for purchase or securitization, lenders must monitor -- on an on-going basis -- changes in a community's status under the National Flood Insurance Program.

---

Page 3 of 10

06/08/95

---

**FannieMae****No. 95-10**

---

---

**Announcement**

---

Part V, Sections 111 and 214, of the Selling Guide require that first mortgages "provide for the monthly deposit of escrow funds to pay as they come due taxes, ground rents, premiums for borrower-purchased mortgages insurance (if applicable), and premiums for hazard insurance." Conditions under which the escrow deposit account may be waived are also discussed. In any instance in which a lender maintains an escrow deposit account for such items, it must also deposit funds for the payment of flood insurance renewal premiums into that account.

Part VIII, Section 702, of the Selling Guide states our requirements for PUD, condominium, and cooperative projects. To reflect recent changes to the National Flood Insurance Program, our requirements related to condominium or cooperative projects that consist of high-rise or other vertical buildings are being modified as follows:

- When a condominium project consists of high-rise or other vertical buildings, we generally do not require separate flood insurance policies for the individual units. Instead, we require the owners' association to obtain a Residential Condominium Building Association Policy for each building that is located in a Special Flood Hazard Area. This policy must provide coverage for all of the common elements and property, as well as for each of the individual units in the building. The amount of required coverage consists of three components -- (1) building coverage should equal 100% of the insurable value of the common elements and property (including machinery and equipment that are part of the building), (2) the contents coverage should equal 100% of the insurable value of all contents (including machinery and equipment that are not part of the building) that are owned in common by the association members, and (3) the coverage for each unit should be the lesser of \$250,000 or the amount of its replacement cost. (If the total amount of required coverage exceeds the maximum available for condominium projects under the applicable National Flood Insurance Program, we will accept coverage that is equal to the maximum available amount. Note, however, that the 80% coinsurance clause may apply unless the elements, property, and units are insured for at least 80% of their replacement cost. When an owners' association refuses to obtain a Residential Condominium Building Association Policy, a separate policy must be obtained for each dwelling unit that secures a mortgage delivered to us.

---

Page 4 of 10

---

06/08/95

---

**FannieMae**

**No. 95-10**

---

---

## **Announcement**

---

- When a cooperative project consists of high-rise or other vertical buildings, we impose no special coverage requirements. For all cooperative projects that have buildings located in a Special Flood Hazard Area, we require the cooperative corporation to obtain a separate flood insurance policy for each building that is located in the Special Flood Hazard Area. The policy must cover the building and any common elements and property (including machinery and equipment) that are owned in common by the shareholders of the cooperative project. (We do not require flood insurance coverage for the individual units.) The amount of coverage should be at least equal to the lesser of the insurable value of the building (including all common elements and property) or the maximum coverage available under the applicable National Flood Insurance Program. Note, however, that the 80% coinsurance clause may apply unless the buildings, elements, and property are insured for at least 80% of their replacement cost.)

Although we require that properties within Special Flood Hazard Areas have adequate flood insurance when the mortgage is originated and that the coverage be maintained as long as the mortgage is in force, we do not specify how lenders accomplish this. There is in the marketplace a type of service called "life-of-loan" coverage or "life-of-loan" monitoring. However, "life-of-loan" is largely a vendor-initiated term that has both broad meaning and inconsistent usage throughout the industry. It does not mean that the monitoring company guarantees that the properties being monitored have flood insurance policies in effect, rather it only means that it will notify the lender if flood insurance is required for a monitored property. A lender is not precluded from selecting a "life-of-loan" monitoring service; however, if a lender selects this type of monitoring, it should assure itself that it has a clear understanding of whether this arrangement will satisfy its on-going compliance obligations.

### Identification of Flood Zone/Insurance Status for Mortgage Deliveries

In order to assist lenders in identifying mortgages that they need to track to assure that they are complying with the provisions of the Flood Act -- and to enable us to better monitor lenders' compliance-- we are implementing a new requirement for lenders to identify mortgage deliveries by coding them with a unique Special Feature Code. The Special Feature Code will indicate not only whether the principal structure is in a Special Flood Hazard Area, but also

---

Page 5 of 10

06/08/95

---

**FannieMae****No. 95-10**

---

---

**Announcement**

---

whether the property improvements are covered by flood insurance. Effective with mortgages delivered on or after September 1, 1995, lenders must provide the applicable Special Feature Code to identify the flood zone and insurance status for every mortgage they deliver to us. Mortgages delivered on or after September 1, 1995, will be returned to the lender (and not purchased) if they do not include a Special Feature Code identifying whether they are located in a Special Flood Hazard Area and indicating the status of their flood insurance coverage.

The following Special Feature Codes should be reported, as appropriate, on the Loan Schedule (Form 1068 or 1069) or the Schedule or Mortgages (Form 2005) -- or in an electronic version of these forms:

- Use Special Feature Code 170 to indicate that the principal structure is located in a Special Flood Hazard Area and is covered by flood insurance;
- Use Special Feature Code 175 to indicate that the principal structure is not located in a Special Flood Hazard Area, but is covered by flood insurance; and
- Use Special Feature Code 180 to indicate that the principal structure is not located in a Special Flood Hazard Area, and is not covered by flood insurance.

Note: A Special Feature Code has not been provided to indicate that the principal structure is located in a Special Flood Hazard Area, but is not covered by flood insurance since such properties are not eligible for delivery to us.

Use of Flood Zone Determination Firms

Lenders may choose to make flood zone determinations themselves or to rely on flood zone determinations that are made by appraisers or third party firms. The Flood Act recognizes that the use of third party firms to perform flood zone determinations and related activities can be a critical component in the mortgage lending process; however, it does place additional burdens on these firms by requiring them to guarantee the accuracy of any determination they make. Because we expect lenders that use outside vendors to exercise

---

Page 6 of 10

06/08/95

---



**FannieMae**

**No. 95-10**

---

---

## **Announcement**

---

care and sound judgment when they select and contract with third-party flood zone determination firms, we are offering the following guidance related to the selection of these firms:

- A lender should select a company that appears on the list of flood zone determination vendors that FEMA makes available. (Lenders should note, however, that the presence of a company on this list does not mean that use of the company has been "approved" or "sanctioned" by FEMA.)
- A lender should become familiar with the various methods that flood zone determination companies use in making flood zone determinations. Firms that not only use the FEMA maps, but also map directly to the property -- by using alternative sources (such as tax maps) as cross references, or using site inspections and surveys when they are needed -- are the most reliable. The use of "probability" or other approximation techniques is not adequate; therefore, lenders should not use the services of firms that rely solely on these methods.
- A lender should ask for, and review, the financial statements of any flood zone determination firm it is considering using to verify that the firm has the financial capacity to support the guarantee of the accuracy of its work that is required under the Flood Act.
- A lender that is considering a "life-of-loan" monitoring service should request the flood zone determination company it selects to agree to continue monitoring for all of the covered properties in the event that the servicing of mortgages secured by the covered properties is transferred to a new servicer.
- A lender should make sure that any contract it enters into with a flood zone determination firm includes clear procedures for resolving disputes related to difficult determinations, sets out the firm's responsibility for guaranteeing its compliance with the Flood Act, and addresses which party will be responsible for any penalty incurred for non-compliance with the Flood Act.

**FannieMae****No. 95-10**

---

---

**Announcement**

---

Flood Insurance Requirements Related to Mortgage Servicing

A servicer's obligation to maintain flood insurance coverage for all properties in Special Flood Hazard Areas extends beyond the requirement to obtain flood insurance in connection with the origination of mortgages to take into account a requirement to obtain coverage in connection with any remapping of flood zones that may subsequently occur. Previously, we required servicers to obtain flood insurance for remapped properties only if they became aware of such remappings during the normal course of business. We will now require servicers to actively monitor all map and community status changes and to take appropriate actions when changes occur. We do not expect servicers to review their entire portfolio for each map change, rather they may review only the portion of their portfolio that is affected by a specific remapping. Servicers may choose to monitor remappings themselves or to use a flood zone determination company to perform the monitoring.

- Servicers that wish to review map changes themselves may access any of the following to obtain remapping information: (1) Federal Emergency Management Agency flood maps, (2) the Federal Register, or (3) the Federal Emergency Management Agency's compendium of map changes.
- Servicers that use a flood zone determination company to monitor flood zone remappings for mortgages in their portfolio do not need to specifically monitor flood zone remappings themselves since that is a function of the monitoring service.

When a servicer determines that a property has been remapped into a Special Flood Hazard Area and the community in which the property is located is "participating" in the National Flood Insurance Program, the servicer must work with the borrower to obtain the required flood insurance. Servicers should encourage borrowers to obtain coverage as quickly as possible -- the flood insurance policy should be in place within 120 days after the effective date of the remapping. If a borrower refuses to obtain the required coverage or to pay a disputed premium, we still expect the servicer to obtain the required coverage, as part of its responsibility for "protecting our interest in the security." The servicer should make every effort to collect

**FannieMae**

**No. 95-10**

---

---

## **Announcement**

---

the applicable premium from the borrower, but, if it is unable to do so, we will reimburse the servicer for the cost of the flood insurance policy. We will then advise the servicer about whether any of the remedies permitted under the mortgage should be pursued against the borrower.

If the community in which a remapped property is located is a "non-participating" community under the National Flood Insurance Program, the servicer should assist the borrower in locating a private insurance carrier that can underwrite an acceptable flood insurance policy. If acceptable insurance coverage cannot be obtained, the servicer must contact its Lender Administration Representative in its lead Fannie Mae regional office to determine the course of action we want taken. At a minimum, we will require the servicer to periodically try to obtain adequate coverage from an acceptable carrier.

Servicers must make sure that the properties securing the mortgages they service for us are adequately protected by flood insurance when it is required, with no lapses in coverage for any reason. Because the maximum level of coverage available under the National Flood Insurance Program has been increased to \$250,000, servicers of mortgages that we have already purchased or securitized should review the coverage for the mortgages in their Fannie Mae portfolio to determine whether additional coverage needs to be obtained for mortgages that are "underinsured" as the result of the coverage amount having been "capped" by the previous maximum limitations.

It is important for servicers that acquire Fannie Mae servicing portfolios through transfers of servicing to have in place appropriate procedures for (1) performing due diligence with respect to flood insurance coverage (including determining whether any previously arranged "life-of-loan" monitoring arrangement remains in force) and the monitoring of changes in flood maps and community designations, and (2) recording the appropriate vendor and product information in their servicing and accounting systems.

### Monitoring Flood Insurance Compliance

We are revising our procedures for monitoring our lenders' compliance with the requirements of the Flood Act and our specific policies. Our compliance reviews will consist of three components. First, when

**FannieMae**

**No. 95-10**

---

**Announcement**

---

we conduct an on-site review of a lender's mortgage underwriting and quality control practices, we will review the lender's procedures for making initial determinations of whether or not properties are located in Special Flood Hazard Areas (and, if they are, for obtaining the required flood insurance). Second, when we conduct on-site reviews of a servicer's mortgage servicing practices, we will verify whether procedures are in place for assuring that any required flood insurance coverage remains in force as long as it is required and for monitoring remappings of flood zones. Third, we will perform a periodic sampling of mortgages from a lender's servicing portfolio to determine whether or not any required flood insurance coverage was obtained and is still in effect.

\*\*\*\*\*

Lenders may contact either their Account Executive or Lender Administration Representative in their lead Fannie Mae regional office if they have any questions about the policy or procedural changes brought about by the Flood Act.

Robert J. Engelstad  
Senior Vice President -  
Mortgage and Lender Standards

# Bulletin

---

**NUMBER: 94-18**

Freddie

Mac

---

---

---

---

---

**TO:** All Freddie Mac Sellers and Servicers  
1994

December 18,

## **SUBJECT**

This bulletin revises Freddie Mac's flood insurance requirements for 1-4 unit dwellings in Special Flood Hazard Areas (SFHAs) in support of the National Flood Insurance Reform Act of 1994. This bulletin alerts you to recent initiatives of the Federal Insurance Administration (FIA) and provides guidance that should help you implement the revised requirements. This bulletin also advises you of the loan-level audits Freddie Mac is conducting to verify compliance with our flood insurance requirements.

## **EFFECTIVE DATE**

Beginning December 8, 1994, you must require Borrowers whose Mortgages have been sold to or serviced for Freddie Mac to obtain flood insurance when postorigination changes in the flood maps place their dwellings "in SFHA." Also beginning immediately, you must include flood insurance documentation in the Mortgage files you send to Freddie Mac for review.

On or after March 1, 1995, you must report the flood insurance status of the Mortgages you sell to Freddie Mac on the delivery forms.

For flood zone determinations (FZDs) made by a third party on or after June 1, 1995, you must ensure that the third party guarantees the accuracy of its determination.

At your option, you may implement any of these changes before its effective date.

## **HOW THESE CHANGES AFFECT YOU**

### **Determining When Flood Insurance Is Required**

The SFHA status of the dwelling will determine whether flood insurance must be in force for Mortgages sold to or serviced for Freddie Mac. So we have revised our requirements as follows:

---

*Seller/Servicer Guide Bulletin*

Page - 1

### Bulletin 94-18

---

Effective immediately for Mortgages serviced for Freddie Mac or originated for sale to Freddie Mac, you must require the Borrower to obtain flood insurance in accordance with federal law when a postorigination change in a Federal Emergency Management Agency (FEMA) flood map results in the dwelling's SFHA status changing from "out of SFHA" to "in SFHA."

- For Mortgages sold to Freddie Mac, flood insurance must be obtained for any dwelling which, as of the Funding Date is "in SFHA." The term "Funding Date" is defined in the Glossary Section of the *Single-Family Seller/Servicer Guide* (the Guide).
- For Mortgages serviced for Freddie Mac, flood insurance must be obtained for any dwelling determined to be "in SFHA" as a result of a FEMA remapping occurring after the Funding Date.

If the Borrower fails to supply evidence of flood insurance when required, you must purchase the insurance on behalf of the Borrower and charge the Borrower for the insurance.

Previously, you were required to take action upon a postorigination remapping by FEMA only if you were aware of the remapping. The revised requirement obligates you to monitor FEMA remappings and respond to each remapping if it affects any dwellings securing Mortgages that you service for us or originate for sale to us.

There are three sources you can access for FEMA remapping information:

- FEMA flood maps
- The Federal Register
- FEMA's compendium of map changes (to be available in the future, as required by federal law)

In addition, some FZD companies provide "life-of-loan" coverage for a one-time fee at loan origination. This coverage reportedly ensures that the Mortgage servicer is kept informed of all SFHA status changes affecting the covered dwelling for the term of the Mortgage. If you decide to obtain this type of coverage, we suggest you ensure that the coverage is viable and portable in a servicing transfer situation. Even if you obtain this coverage, you remain responsible to Freddie Mac for monitoring the SFHA status of the dwellings securing Mortgages serviced for us or originated for sale to us.

To get you started, we have attached, as Exhibit D, a FEMA list of communities remapped into SFHAs from October 1993 through September 1994. You should remember, however, that the flood zone determination must be made dwelling by dwelling; you should not conclude that a dwelling is "in SFHA" or "out of SFHA" solely on the basis of the community's name or the Mortgaged Premises' zip code.

Freddie Mac's communication of information on FEMA-remapped communities does not obligate us to keep you informed of SFHA designations, and the absence of such communication does not relieve you of the responsibility for due diligence in the normal course of your loan origination and servicing operations.

**Submitting Mortgage Files for Freddie Mac's Quality Control**

Effective immediately, you must provide documentation of the FZD performed and, where applicable, evidence of flood insurance with each Mortgage file we request for postfunding quality control review.

Revised Guide Section 44.9(c) (see Exhibit A) specifies acceptable FZD documentation.

Section 58.7 of the Guide specifies the documents that constitute final evidence of insurance to be retained in the Mortgage file. Until final evidence of insurance is available, alternative documentation specified in new Guide Section 46.21 (see Exhibit A) will be acceptable.

**Delivering Mortgages to Freddie Mac**

Effective for Mortgages delivered to Freddie Mac on or after March 1, 1995, you must identify the SFHA and flood insurance status of each Mortgage by Special Characteristics Codes (SCCs). These new flood insurance SCCs must be reported on Form 11, Mortgage Submission Schedule, or Form 13SF, Mortgage Submission Voucher, as required in the Guide. Both of these forms have been revised to reflect the inclusion of these new SCCs. The revisions are set forth in Exhibit B.

Mortgages delivered on or after March 1, 1995, without SFHA and flood insurance SCCs will not be eligible for purchase by Freddie Mac.

**Determining Whether Dwellings Are Located in SFHAs**

We have revised the Guide to accommodate FZDs that are not made by an appraiser. You must ensure that any FZD made on or after June 1, 1995, by a third-party FZD maker (a fee appraiser, a surveyor or a specialized FZD company) is guaranteed by the FZD maker for its accuracy. Ultimately, however, you are responsible to Freddie Mac for the accuracy of an FZD. If you contract with a third-party FZD maker, it is essential that you exercise due care in your selection, paying special attention to the maker's accuracy record and the adequacy of its financial guarantees. Exhibit C suggests areas for you to consider when selecting a third-party FZD contractor.

**Obtaining More Information**

The FIA, through the National Flood Insurance Program (NFIP), is conducting workshops for Mortgage originators and servicers and is making lender publications and consumer information kits available free of charge upon request.

### Bulletin 94-18

---

Since the lack of flood insurance in the face of renewed flooding represents great risks to our Mortgage investments, we strongly encourage you to attend the NFIP workshops and obtain the materials. You can then disseminate the consumer information as a service to your Mortgage customers and your community.

To obtain information on the workshops or to order publications and information kits, please contact the NFIP at (800) 638-6620.

### Preparing for Freddie Mac Flood Insurance Audits

During our on-site servicing audits, we have begun to conduct loan-level reviews of your compliance with our flood insurance requirements. These requirements are set forth in Chapter 58 of the Guide. The review process involves Freddie Mac ordering preaudit independent FZDs of dwellings in your Freddie Mac servicing portfolio and verifying, on-site, the flood insurance coverage of dwellings we have determined to be "in SFHA."

### CHANGES TO THE *SINGLE-FAMILY SELLER/SERVICER GUIDE*

Exhibit A contains revisions to Guide chapters 44, 46, 47, 56 and 58. Exhibit B contains revisions to Forms 11 and 13SF.

### BACKGROUND

Public Law 103-325, the National Flood Insurance Reform Act of 1994, imposes new requirements on Freddie Mac and other financial institutions. The purpose of this law is to increase the number of dwellings covered by flood insurance and ensure compliance with the law by Mortgage originators and servicers. We urge you to become familiar with this important new law.

### CONCLUSION

Together, we can help alleviate the hardship inflicted upon Borrowers by uninsured flood losses and, at the same time, reduce our exposure to this risk. If you have questions regarding our flood insurance requirements, please call (800) FREDDIE (option 2).

Cordially,

Michael K. Stamper  
Executive Vice President  
Risk Management

---

Page - 4

*Seller/Service Guide Bulletin*



# Exhibit A

Revisions to the Freddie Mac *Single-Family Seller/Servicer Guide*  
Re: Revised Flood Insurance Requirements  
(Effective Immediately)

The last bullet point of Section 44.9(c) has been revised as follows:

**44.9  
Property  
description and  
analysis on the  
appraisal report**

- **Flood hazard:** The appraisal report must indicate whether the dwelling on the subject property lies within a “Special Flood Hazard Area” (SFHA) as identified by the Federal Emergency Management Agency (FEMA) through the National Flood Insurance Program (NFIP). The flood zone, flood map number and map date must also be stated. (See Section 58.3 for flood insurance requirements.)

The appraiser need not complete this section if the flood zone is determined by another party, such as a nonappraiser on the staff of the Seller, a surveyor or a specialized flood zone determination company. If the flood zone determination is not made by an appraiser, the resulting flood zone documentation must contain at least the flood hazard information required in the appraisal report and must be attached to the appraisal report. The Seller warrants that any flood zone determination made on or after June 1, 1995, by a party other than the Seller is guaranteed by the flood zone determination maker to be accurate, in accordance with federal law. The Seller, however, remains responsible to Freddie Mac for the accuracy of any flood zone determination made by the Seller or a party other than the Seller.

	<p>The fourth paragraph of Section 46.1 has been revised as follows:</p> <hr/>
<b>46.1 Postfunding quality control</b>	<p>Freddie Mac [3-6, 8]* must receive the requested Mortgage files within 15 Business Days from the date of the letter requesting the Mortgage files. The file for each Mortgage selected for quality control review must contain legible photocopies of the applicable documents listed in Sections 46.2-46.21 and any other documentation requested by Freddie Mac, with one exception. The photographs attached to the copy of the appraisal report must be originals. All documents must be secured to the top right side of a legal-sized manila folder and arranged in the order of documents specified in Sections 46.2-46.22, with the first item on top.</p> <hr/>
	<p><i>*See the directory in your <u>Single-Family Seller/Service</u> <u>Guide</u> for address.</i></p> <hr/>
	<p>Chapter 46 is revised to reflect the addition of two new Sections 46.20 and 46.21, changing present Section 46.20 to 46.22. The complete text of these sections is as follows:</p> <hr/>
<b>46.20 Documentation of flood zone determination</b>	<p>If the flood zone determination is not made by an appraiser, the determination must be documented as required in Section 44.9(c).</p> <hr/>
<b>46.21 Evidence of flood insurance</b>	<p>Final evidence of flood insurance must meet the requirements of Section 58.7.</p> <p>If final evidence of flood insurance is not available at the time of the quality control review, one of the following documents is acceptable:</p> <ul style="list-style-type: none"><li>■ Completed and executed NFIP <u>Flood Insurance Application</u> PLUS a copy of the borrower's premium check or agent's paid receipt</li></ul> <p>OR</p>

<p><b>46.21</b> <b>Evidence of flood insurance (continued)</b></p>	<ul style="list-style-type: none"> <li>■ Completed and executed NFIP <u>Flood Insurance Application</u> PLUS the final HUD-1 reflecting the flood insurance premium collected at closing</li> <p>OR</p> <li>■ Completed and executed NFIP <u>General Change Endorsement Form</u> showing the assignment of the current flood insurance policy by the property seller to the Borrower</li> <p>OR</p> <li>■ Agent-executed NFIP <u>Certification of Proof of Purchase of Flood Insurance</u></li> </ul> <p>If the flood insurer is not the NFIP, the insurer's equivalent of the applicable NFIP form is acceptable.</p> <p>If the appraisal report or flood zone determination documentation shows the dwelling is in SFHA but flood insurance was waived, the Mortgage file must include the documentation which served as the basis for the waiver, specifically, a FEMA Letter of Map Amendment (LOMA) or a FEMA Letter of Map Revision (LOMR).</p>
<p><b>46.22</b> <b>Other documentation</b></p>	<p>The Seller agrees to maintain and submit all other documents Freddie Mac requests. All submitted documents must be legible. Freddie Mac may require that the requested documents be delivered to Freddie Mac or to a third-party Custodian.</p>
<p><b>47.6</b> <b>Property insurance policies</b></p>	<p>Section 47.6 is revised as follows:</p> <hr/> <p>The file must contain property insurance policies, properly endorsed, or suitable evidence of insurance as described in Section 58.7, unless the Seller or Servicer carries Mortgage impairment insurance instead of maintaining possession of property insurance policies.</p> <hr/>

<b>56.14 Notices to third parties</b>	<p>The second bullet Point of Section 56.14 is revised as follows:</p> <hr/> <p>■ Advise all applicable property insurers including, if applicable, FEMA, of the transfer and of the name and address of the Transferee to modify the Mortgage clause required by Section 58.6</p> <hr/>
<b>58.9 Special insurance requirements and changes in insurance requirements</b>	<p>The first paragraph of Section 58.9 is revised as follows:</p> <hr/> <p>The Seller/Servicer must require the Borrower to obtain appropriate insurance coverage in accordance with the terms of the Security Instrument and applicable law when any of the following conditions exists:</p> <hr/> <p>The second bullet point of Section 58.9 is revised as follows:</p> <hr/> <p>■ The area where the Mortgaged Premises are located was not subject to flood insurance requirements at inception of the Mortgage or when Freddie Mac purchased the Mortgage, but has now been classified as an SFHA and the dwelling on the Mortgaged Premises is determined to be in the new SFHA. If the new flood zone determination is not made by an appraiser, the determination must be documented as required in Section 44.9(c). The Servicer warrants that any flood zone determination made on or after June 1, 1995, by a party other than the Servicer is guaranteed by the flood zone determination maker to be accurate, in accordance with federal law. The Servicer, however, remains responsible to Freddie Mac for the accuracy of any flood zone determination made by the Servicer or a party other than the Servicer.</p> <hr/>

# Exhibit B

Revisions to the Freddie Mac *Single-Family Seller/Service Guide*  
Re: Revised Flood Insurance Requirements  
(Effective March 1, 1995)

Revised Form 11

---

**Form 11**

Four new Special Characteristics Codes are added to the list on page F11-5, as follows:

---

170 = in SFHA with flood insurance  
185 = in SFHA without flood insurance  
175 = out of SFHA with flood insurance  
180 = out of SFHA without flood insurance

---

One additional paragraph has been added to the end of this section on page F11-5. The language of the new last paragraph is as follows:

---

Mortgages delivered on or after March 1, 1995, without SFHA and flood insurance Special Characteristics Codes (SCCs) will not be eligible for purchase by Freddie Mac.

---

Revised Form 13SF

---

Four new Special Characteristics Codes are added to the list on page F13SF-5, as follows:

---

**Form 13SF**

170 = in SFHA with flood insurance  
185 = in SFHA without flood insurance  
175 = out of SFHA with flood insurance  
180 = out of SFHA without flood insurance

**Form 13SF**  
**(continued)**

One additional paragraph has been added to the end of this section on page F13SF-6. The language of the new last paragraph is as follows:

---

Mortgages delivered on or after March 1, 1995, without SFHA and flood insurance Special Characteristics Codes (SCCs) will not be eligible for purchase by Freddie Mac.

---

# Exhibit C

## **SUGGESTED AREAS FOR REVIEW IN SELECTING A FLOOD ZONE DETERMINATION PROVIDER**

- 1 How long has the provider been in the business of making flood zone determinations (FZDs)?
- 2 In what areas of the country does the provider make FZDs?
- 3 What map sources are used for FZDs? How are these sources used? How are these sources kept current?
- 4 What techniques and processes are used for FZDs? Does the FZD read to the property boundary line or to the dwelling on the property? What techniques and processes are used for contested FZDs?
- 5 What quality control procedures does the FZD provider rely upon?
- 6 What property data are required for an FZD? What media are available for you to provide the data and to receive the FZD report? What is the typical turnaround time for an FZD? What is the typical turnaround time for a redetermination?
- 7 What training is provided to the FZD staff?
- 8 What level of pre- and post-FZD customer service support is available to the FZD client?
- 9 Is life-of-loan coverage available? If so,
  - Does it cover changes that do not result in new map panels, such as those changes made by LOMAs or LOMRs?
  - How and how often are changes communicated?
  - How are servicing transfers handled?
  - How are the legal and service liabilities funded?
- 10 What disaster recovery systems and processes are in place to ensure integrity and continuity of the FZD operations?
- 11 Is there an indemnification backing the guarantee of accuracy of an FZD? If so,
  - Does it provide for, at a minimum, refunding all paid flood insurance premiums for inaccurately placing a dwelling "in SFHA?"
  - Does it provide for compensation for incurred damages at least equal to compensation claimable under a flood insurance policy for inaccurately placing a dwelling "out of SFHA?"

Other considerations should include

- The financial strength of the guarantor and any insurer
- The insurer's rating by A.M. Best, Standard & Poor's, Moody's or a comparable rating company
- The insurance limits of liability
- The scope of coverage of the insurance policy
- Claim settlement procedures (including turnaround time) and claim experience
- Error rates
- References from other Mortgage industry clients
- Whether financial statements and internal controls are audited by an Independent Public Accountant
- Whether the provider is or has been subject to litigation or regulatory action over FZD accuracy

12 What is the provider's FZD fee structure?



# Bulletin

---

NUMBER: 95-3

Freddie  
Mac

---

---

---

---

---

TO: All Freddie Mac Sellers and Servicers

March 13, 1995

## SUBJECT

This bulletin modifies our flood insurance requirements for 1-4 unit dwellings announced in Bulletin 94-18, dated December 8, 1994, to clarify the Servicers' role when Federal Emergency Management Agency (FEMA) map changes occur after a Mortgage has been originated.

This bulletin also advises you of actions you must take as a result of the National Flood Insurance Program (NFIP) increasing the maximum amount of insurance sold for 1-unit dwellings from \$185,000 to \$250,000.

## EFFECTIVE DATES

### Map Changes

For any FEMA postorigination map change with an effective date

- **From October 15, 1993, to September 30, 1994,** you have until April 8, 1995, to have flood insurance in force on any dwelling determined to be in a Special Flood Hazard Area (SFHA)
- **From October 4, 1994, to March 23, 1995,** you have until July 13, 1995, to have flood insurance in force on any dwelling determined to be "in SFHA"
- **On or after April 1, 1995,** you have 120 days from the effective date of the map change to have flood insurance in force on any dwelling determined to be "in SFHA"

### Flood Insurance Cap

Flood insurance policies obtained on or after March 1, 1995, must provide coverage at least equal to the coverage required under Section 58.3(a) of the Freddie Mac *Single-Family Seller/Servicer Guide* (the Guide), subject to the new cap of \$250,000.

**Bulletin 95-3**

---

Flood insurance policies obtained before March 1, 1995, are subject to the new \$250,000 cap and coverage must be adjusted, if necessary, by the later of

- May 31, 1995, or
- The first renewal date (or first anniversary date if a three-year policy) after March 1, 1995

Examples of renewal dates and coverage adjustment dates for affected flood insurance policies are as follows:

<b>Renewal Date</b>	<b>Coverage Adjustment Date</b>
9/1/94	9/1/95
10/1/94	10/1/95
11/1/94	11/1/95
12/1/94	12/1/95
1/1/95	1/1/96
2/1/95	2/1/96
3/1/95	5/31/95
4/1/95	5/31/95
5/1/95	5/31/95
6/1/95	6/1/95

**WHY WE'RE MAKING THESE CHANGES**

Many of you have asked us to define your responsibility for acting on FEMA map changes. Therefore, we are modifying the requirements of Bulletin 94-18 to clarify your responsibility and reduce your costs. Under Bulletin 94-18, you were required to review your portfolio for all map changes; now you must do so only for map changes with effective dates on or after October 15, 1993.

We are also responding to your request for guidance in implementing the higher NFIP cap. The NFIP raised its flood insurance coverage limit for 1-unit dwellings, as of March 1, 1995, in accordance with the National Flood Insurance Reform Act of 1994. We have revised our flood insurance requirements to comply with this new cap.

**HOW THESE CHANGES AFFECT YOU****Responding to Map Changes**

Sacramento map changes. Freddie Mac notified all Servicers on May 18, 1990, of map changes affecting the city of Sacramento, CA. You are already responsible for ensuring that dwellings "in SFHAs" have flood insurance as a result of the Sacramento map change.

Map changes before October 15, 1993. For FEMA map changes with an effective date before October 15, 1993, you must require a Borrower to obtain flood insurance if you are aware that a dwelling has been classified as "in SFHA" (see Section 58.9 of the Guide in effect prior to Bulletin 94-18).

Map changes from October 15, 1993 to March 31, 1995. In Bulletin 94-18 we published a list of flood map changes with effective dates between October 15, 1993, and September 30, 1994. We have made you aware of those map changes, and you have until April 8, 1995, to have flood insurance in place for any dwelling determined to be "in SFHA."

We have attached, as Exhibit B, a FEMA list of communities with map changes effective from October 4, 1994, through March 23, 1995. (If any changes occur between March 23, 1995, and April 1, 1995, we will advise you of them as well.) You will have until July 13, 1995, to ensure that dwellings that are "in SFHA" as a result of the changes in Exhibit B are covered by flood insurance.

Map changes on or after April 1, 1995. For any Mortgages you service for Freddie Mac, you must ensure that flood insurance is in force for any dwellings which are "in SFHA" on or after April 1, 1995. This insurance must be in force within 120 days of the effective date of any map change by FEMA.

This requirement means that you must have processes in place that will allow you to

- Identify all map changes
- Determine which dwellings on Mortgaged Premises in the affected communities are now "in SFHA," and
- Ensure that affected Borrowers obtain flood insurance

## **Responding to the New Flood Insurance Cap**

The \$250,000 NFIP cap means that some of the 1-unit dwellings insured for \$185,000 under flood insurance policies obtained before March 1, 1995, may now be underinsured. Those dwellings must have their coverage increased so that coverage continues to be at least equal to the unpaid principal balance of the Mortgage or 80 percent of the insured dwelling's replacement cost, whichever is higher, in accordance with Guide Section 58.3(a).

The NFIP cap for 2-4 unit dwellings remains unchanged at \$250,000.

### Bulletin 95-3

---

You need to monitor and follow up on flood insurance renewal notices to ensure that affected Borrowers update their coverage. The Borrowers' insurance agents should be advising Borrowers and their Mortgage servicers of the higher NFIP cap, and may identify those dwellings that are underinsured.

The NFIP will pay for any flood loss sustained on a 1-unit dwelling insured under a pre-March 1, 1995, policy by applying the replacement cost provision as follows:

- Based on the NFIP cap of \$185,000 for any flood loss that occurs between March 1, 1995, and May 31, 1995
- Based on the NFIP cap of \$250,000 for any flood loss that occurs on or after June 1, 1995

### Complying With Other Freddie Mac Flood Insurance Requirements

Other requirements announced in Bulletin 94-18 are not affected by this bulletin.

### Complying With Applicable Laws, Regulations and Requirements

In addition to Freddie Mac's requirements, you must comply with all applicable laws, regulations and FHA/VA requirements related to flood insurance.

## REVISIONS TO THE *SINGLE-FAMILY SELLER/SERVICER GUIDE*

Exhibit A revises Guide Section 58.9 to clarify your responsibility for responding to map changes. These revisions, which supersede the changes announced in Bulletin 94-18 to Section 58.9, will be incorporated into a future Guide update.

Because Section 58.3(a) of the Guide already caps our flood insurance requirement at "the maximum amount of insurance currently sold under the NFIP for the type of improvements insured," no Guide change is necessary.

## CONCLUSION

The goal of our flood insurance policy is to minimize losses for homeowners, Seller/Servicers and Freddie Mac. We believe that our requirements, as modified by this bulletin, represent a reasonable approach to managing the risk associated with uninsured flood losses. As nature recently showed us in California, these risks are very real. Many of the flooded California communities were included in the map changes we identified in Bulletin 94-18.

Bulletin 95-3

---

If you have questions regarding our flood insurance requirements, please call (800) FREDDIE (option 2).

Cordially,

Michael K. Stamper  
Executive Vice President  
Risk Management

# Exhibit A

Revisions to the Freddie Mac *Single-Family Seller/Servicer Guide*  
Re: Revised Flood Insurance Requirements  
(Effective March 13, 1995)

**58.9  
Special  
insurance  
requirements  
and changes in  
insurance  
requirements**

The second bullet point of Section 58.9 (as revised by Bulletin 94-18, dated December 8, 1994) has been revised as follows:

The area where the Mortgaged Premises are located was not subject to flood insurance requirements at origination of the Mortgage, or when Freddie Mac purchased the Mortgage, but has now been classified as an SFHA by a FEMA map change, the Servicer is aware of such classification and the Servicer has determined that the dwelling on the Mortgaged Premises is in the new SFHA. Flood insurance required under these provisions must be in force within 120 days of the effective date of the map change or the related Freddie Mac announcement.

The Servicer must have processes in place that allow the Servicer to identify any map change that becomes effective on or after April 1, 1995, determine which dwellings on Mortgaged Premises in the community affected by the map change are now "in SFHA" and ensure that affected borrowers obtain flood insurance within 120 days of the effective date of the map change.

Any new flood zone determination necessitated by the above provisions that is not made by an appraiser must be documented as required in Section 44.9(c). The Servicer warrants that any flood zone determination made on or after June 1, 1995, by a party other than the Servicer is guaranteed by the flood zone determination maker to be accurate, in accordance with federal law. The Servicer, however, remains responsible to Freddie Mac for the accuracy of any flood zone determination made by the Servicer or a party other than the Servicer.

# Industry Letter

May 4, 1998

**SUBJECT:** Flood Insurance on Los Angeles Properties

**Freddie  
Mac**

---

---

---

---

---

**TO:** All Freddie Mac Sellers and Servicers

The Federal Emergency Management Agency (FEMA) has identified parts of 14 Los Angeles-area communities as Special Flood Hazard Areas (SFHAs), or high-risk flood zones. The agency will show these SFHAs as AR Zones on new Flood Insurance Rate Maps (FIRMs) that are effective on July 6.

Los Angeles Communities Affected By FEMA Map Changes		
Bellflower	Lakewood	Montebello
Carson	Long Beach	Paramount
Compton	The City of Los Angeles	Pico Rivera
Downey	Los Angeles County	South Gate
Gardena	Lynwood	

Properties that secure mortgages you sell to Freddie Mac or currently service for us must be insured against flood hazards if they're located in an SFHA. You need to review your mortgage files to identify any Los Angeles-area properties that require flood insurance as a result of the FEMA map changes. Then you must advise borrowers whose properties are not properly insured that they have to obtain and maintain the required flood insurance coverage.

We encourage you to review our flood insurance requirements in *Single-Family Seller/Servicer Guide* Sections 44.9, 46.20, 46.21, 58.3 and 58.9. If you rely on a flood-zone determination vendor to identify properties affected by FEMA map changes, we also recommend that you consult with your vendor as soon as possible.

Mortgages that you deliver to us on or after July 6 which are secured by Los Angeles-area properties in newly designated SFHAs must have the required flood insurance coverage. For mortgages you currently service for us, you have until November 6—120 days from the effective date of the FEMA map changes—to

- Identify those secured by Los Angeles-area properties in newly designated SFHAs and
- Have flood insurance in place where applicable

If you haven't already begun to identify the properties and borrowers affected by the FEMA map changes, we urge you to start as soon as possible. By acting now, you can give your borrowers an opportunity to purchase flood insurance at current non-SFHA rates. If borrowers who have properties in the new SFHAs purchase flood insurance on or after July 6, they'll pay the higher SFHA rate.

FEMA gave us an example of a home in one of the new SFHAs that would be insured today for a non-SFHA annual premium of \$281 for \$100,000 of building coverage. Flood insurance purchased on or after July 6 for that same home will cost the borrower \$595 for \$100,000 of building coverage.

For more information about FEMA's map revisions, you can call (800) 427-4661 or the National Flood Insurance Program's regional office serving your state. You can also visit FEMA's web site at <http://www.fema.gov>.

If you have questions about our flood insurance requirements, please call your account manager or (800) FREDDIE.

Sincerely,

David Andrukonis  
SVP and General Manager  
Seller Division

Paul T. Peterson  
Senior Vice President  
Servicer Division



Appraisals

Chapter 44

44.9

Property description  
and analysis on the  
appraisal report  
(continued)

SFHA
FEMA
NFIP

- **Streets:** The subject property must have legally appropriate ingress and egress. The streets serving the subject property must be maintained in a manner that generally meets community standards. In addition, the comparable sales should have street maintenance similar to the subject property. When differences exist between the ownership or maintenance of the subject property's streets and the comparable sale's streets, adjustments made to the comparable sale, or lack of adjustments, for the differences must be explained in the comments area. In addition, the appraisal report must evaluate the effect these differences have on the subject property's value or marketability.
- **Flood hazard:** The appraisal report must indicate whether the dwelling on the subject property lies within a "Special Flood Hazard Area" (SFHA) as identified by the Federal Emergency Management Agency (FEMA) through the National Flood Insurance Program(NFIP). The flood zone, flood map number and map date must also be stated. (See Section 58.3 for flood insurance requirements.)

The appraiser need not complete this section if the flood zone is determined by another party, such as a nonappraiser on the staff of the Seller, a surveyor or a specialized flood zone determination company. If the flood zone determination is not made by an appraiser, the resulting flood zone documentation must contain at least the flood hazard information required in the appraisal report and must be attached to the appraisal report. The Seller warrants that any flood zone determination made on or after June 1, 1995, by a party other than the Seller is guaranteed by the flood zone determination maker to be accurate, in accordance with federal law. The Seller, however, remains responsible to Freddie Mac for the accuracy of any flood zone determination made by the Seller or a party other than the Seller.

SFHDF
-------

Any flood zone determination made by any party on or after January 2, 1996, must be documented by a completed FEMA Standard Flood Hazard Determination, FEMA Form 81-93, dated June 1995, (Standard Flood Hazard Determination Form (SFHDF), Exhibit 13) in accordance with federal law. The SFHDF may be used in printed, computerized or electronic format. If an electronic format is used, the exact format and layout of the SFHDF are not required, but all the fields and elements not identified as optional on the SFHDF are required. At the option of the flood zone determination maker, the SFHDF may be used before January 2, 1996.

**44.9****Property description  
and analysis on the  
appraisal report  
(continued)****(e) Impact of Contaminated Sites, Hazardous Substances and other adverse conditions**

The appraiser must consider any known Contaminated Sites or Hazardous Substances that affect the property or the neighborhood in which the property is located. The appraiser must also note the presence of Contaminated Sites or Hazardous Substances in the appraisal report, make any appropriate adjustments to market value to reflect them, and comment on the effect they have on the marketability or value of the subject property.

Examples of matters about which the appraiser must note and comment include, but are not limited to,

- Any presence of asbestos, urea-formaldehyde or any similar insulation in the dwelling
- Proximity of the property and/or its neighborhood to a Contaminated Site
- Proximity of the property to ground water contamination, chemical or petroleum spills or other Hazardous Substances that are expected to impact the area for more than one year

The appraiser must also comment on, and consider the impact on the value of the property of, the proximity of the property to areas that may affect the value or marketability of the property, including, but not limited to, the following:

1. Industrial sites
2. Waste or water treatment facilities
3. Commercial establishments (other than retail establishments that serve the residential neighborhood)
4. Airport approach paths
5. Flood plains
6. Landslide areas

**(f) Comments section**

Any additional features; necessary repairs or modernization; or physical, functional or external inadequacies must be reported in the “comments” sections of the form. Repairs that are not cosmetic must be completed prior to delivery of the Mortgage to Freddie Mac. Cosmetic repairs, defined as those not affecting the safety, structural

**46.15****Mortgage payment history**

A payment history is required from the Origination Date of the Mortgage sold to Freddie Mac. This Mortgage payment history must

- Demonstrate no Delinquencies of 30 days or more
- Be understandable without code translation

**46.16****Verification of source of funds**

Evidence of verification of all sources of cash or other equity or assets used for down payment, prepaid items, closing costs, financing costs and reserves is required. Verification must be in accordance with Section 37.23.

**46.17****Verification of previous Mortgage/rental payment history**

Evidence of verification of Mortgage payment history and/or rental payment history for the 12-month period prior to Mortgage application is required.

**46.18****Sales contract**

For purchase Mortgages, a copy of the sales contract is required.

**46.19****Closing statements**

The final HUD-1 or other Mortgage closing statements signed by all parties to the transaction and evidencing all costs to home buyer and home seller are required.

**46.20****Documentation of flood zone determination**

The flood zone determination must be documented as required in Section 44.9(c).

**46.21****Evidence of flood insurance**

Final evidence of flood insurance must meet the requirements of Section 58.7.

If final evidence of flood insurance is not available at the time of the quality control review, one of the following documents is acceptable:

Completed and executed NFIP Flood Insurance Application PLUS a copy of the borrower's premium check or agent's paid receipt

OR

- Completed and executed NFIP Flood Insurance Application PLUS the final HUD-1 reflecting the flood insurance premium collected at closing

OR

- Completed and executed NFIP General Change Endorsement Form showing the assignment of the current flood insurance policy by the property seller to the Borrower

OR

- Agent-executed NFIP Certification of Proof of Purchase of Flood Insurance

If the flood insurer is not the NFIP, the insurer's equivalent of the applicable NFIP form is acceptable.

If the appraisal report or flood zone determination documentation shows the dwelling is in SFHA but flood insurance was waived, the Mortgage file must include the documentation which served as the basis for the waiver, specifically, a FEMA Letter of Map Amendment (LOMA) or a FEMA Letter of Map Revision (LOMR).

LOMA
LOMR

---

**46.22****Other documentation**

The Seller agrees to maintain and submit all other documents requested by Freddie Mac. All submitted documents must be legible. Freddie Mac may require that the requested documents be delivered to Freddie Mac or to a third-party Custodian.

---

### 47.3

#### Assignment instrument (continued)

- If the Mortgage is registered with MERS and originated with MERS named in the Security Instrument as the original mortgagee of record, then no original recorded assignment to MERS is required

If the Seller/Servicer uses a third-party Custodian or is a self-Custodian then the assignments will be held by the Custodian.

---

### 47.4

#### Power of attorney

If the Note was executed by a person acting as attorney-in-fact pursuant to authority granted by a Borrower under a power of attorney, the copy of the power of attorney must be attached to the copy of the Note kept in the file. Refer to Section 16.5 for documentation delivery requirements for powers of attorney.

---

### 47.5

#### Plat of survey

The file must contain a plat of survey, if required by Section 39.2(e).

---

### 47.6

#### Property insurance policies

The file must contain property insurance policies, properly endorsed, or suitable evidence of insurance as described in Section 58.7, unless the Seller or Servicer carries Mortgage impairment insurance instead of maintaining possession of property insurance policies.

---

### 47.7

#### Assurance of water supply

If the Mortgaged Premises are dependent for assurance of an adequate supply of water on a water or irrigation company that supplies water only to its shareholders, the file must contain a stock certificate, duly endorsed to Freddie Mac, entitling the property owner to an adequate supply of water.

---

**Flood insurance**

FEMA
SFHA

If the area where the Mortgaged Premises are located has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area (SFHA), the Seller/Service must ensure that flood insurance is maintained and that it provides coverage at least equivalent to that provided under the NFIP in the amount specified later in this section.

The Seller/Service may waive the flood insurance requirement if

- The land or a portion of it is in an SFHA but the improvements are not, or
- The Borrower has provided the Seller/Service with a Letter of Map Amendment (LOMA) from FEMA excluding the improvements or the entire property from an SFHA, or
- The Borrower has provided the Seller/Service with a Letter of Map Revision (LOMR) from FEMA removing the community's SFHA designation

LOMA
------

LOMR
------

If the area where the Mortgaged Premises are located is an SFHA but the community does not participate in the NFIP ("nonparticipating community"), the Mortgage is not eligible for sale to Freddie Mac.

**(a) 1-4 unit properties**

The insurance limits must at least equal the **higher** of

- The unpaid balance of the Mortgage\* up to 100 percent of the full replacement cost of the insurable improvements (\*for a Second Mortgage/HIL, the aggregate unpaid balance of the Second Mortgage/HIL and all outstanding superior liens on the Mortgaged Premises)
- 80 percent of the full replacement cost of the insurable improvements

However, the insurance limits need not exceed the maximum amount of insurance currently sold under the NFIP for the type of improvements insured.

The deductible may not exceed the higher of \$1,000 or 1 percent of the policy's insurance limits, subject to the maximum deductible amount allowed under the NFIP.

**Flood insurance  
(continued)**

**(b) PUD units**

Flood insurance requirements for 1-4 unit properties apply to similar residential properties within a PUD.

**(c) PUD homeowners associations**

The PUD homeowners association must maintain coverage on common areas and property for 100 percent of their insurable value. Deductibles may not exceed the lower of \$5,000 or 1 percent of the applicable amount of coverage. Funds for such deductibles must be included in the association's reserves and must be so designated.

**(d) Condominium units**

Flood insurance requirements for townhouses and rowhouses are those applicable to 1-4 unit properties. Flood insurance is not required for individual units within a high-rise or vertical condominium.

**(e) Condominium owners associations**

The condominium owners association must maintain coverage for detached common elements and property for 100 percent of their insurable value.

If the condominium consists of high-rise or other vertical dwelling units, the condominium association must maintain coverage that meets the following requirements:

1. The amount of buildings coverage must equal 100 percent of the insurable value of the common elements and property, including any machinery and equipment that are part of the buildings.
2. The contents coverage must equal 100 percent of the insurable value of all contents, including machinery and equipment not part of the buildings, that are owned in common by the association members.
3. Deductibles may not exceed the lower of \$5,000 or 1 percent of the applicable amount of coverage.
4. Funds for such deductibles must be included in the association's reserves and be so designated.
5. A separate condominium association endorsement is required if not already a part of the policy.

**Special insurance requirements and changes in insurance requirements**

The Seller/Servicer must require the Borrower to obtain appropriate insurance coverage in accordance with the terms of the Security Instrument and applicable law when any of the following conditions exists:

- The Seller/Servicer becomes aware of localized perils (for example, flood, sinkhole, mine subsidence, volcanic eruption, avalanche) that are not covered by standard property insurance.
- The area where the Mortgaged Premises are located was not subject to flood insurance requirements at inception of the Mortgage or when Freddie Mac purchased the Mortgage, but has now been classified as an SFHA by a FEMA map change, the Servicer is aware of such classification and the Servicer has determined that the dwelling on the Mortgaged Premises is in the new SFHA. Flood insurance required under these provisions must be in force within 120 days of the effective date of the map change or the related Freddie Mac announcement.

The Servicer must have processes in place that allow the Servicer to identify any map change that becomes effective on or after April 1, 1995, determine which dwellings on Mortgaged Premises in the community affected by the map change are now “in SFHA” and ensure that affected Borrowers obtain flood insurance within 120 days of the effective date of the map change.

Any new flood zone determination necessitated by the above provisions that is not made by an appraiser must be documented as required in Section 44.9(c). The Servicer warrants that any flood zone determination made on or after June 1, 1995, by a party other than the Servicer is guaranteed by the flood zone determination maker to be accurate, in accordance with federal law. The Servicer, however, remains responsible to Freddie Mac for the accuracy of any flood zone determination made by the Servicer or a party other than the Servicer.

- The area where the Mortgaged Premises are located is an SFHA but the community has become a nonparticipating community and flood insurance provided by the NFIP will not be renewed.
- The Borrower does not maintain any of the insurance coverages required of the Borrower in Sections 58.2B58.3.1.



**Special insurance requirements and changes in insurance requirements (continued)**

The Servicer must follow up to verify that adequate coverage has been obtained and remains in force. If the Borrower does not or cannot obtain such coverage, the Servicer must do so. The Servicer must then adjust the Borrower's Escrow payments accordingly or bill the Borrower to recover the advance if the Servicer does not maintain an Escrow account for the Borrower. If the Borrower refuses to reimburse the Servicer, the Servicer may recommend acceleration to Freddie Mac for the Borrower's default under the terms of the Security Instrument.

If the additional coverage cannot be obtained, the Servicer must immediately make appropriate recommendations to Freddie Mac [11].

The Servicer may authorize the Borrower to discontinue flood insurance coverage upon verification of map revision or receipt of either

- A LOMA issued to the Borrower by FEMA, or
- A LOMR issued to the Borrower's community by FEMA

---

**58.10****Insurance loss settlements**

Upon notification of loss or damage to the Mortgaged Premises, the Servicer must monitor and coordinate the claim process with the Borrower and the insurer. The Servicer must take appropriate action to

- Verify the extent of the loss or damage
- Ensure judicious disbursement of insurance proceeds for the necessary repairs
- Protect the priority of the Mortgage by obtaining, where necessary, waivers of materialman's or mechanic's liens
- Document completion of the repairs

Refer to Section 67.27, Servicing Mortgages on distressed properties, for additional requirements.

The Servicer may be named as loss payee on insurance drafts and must comply with any applicable law and, where applicable, any requirement of the FHA, VA or MI. Details concerning the loss or damage and disposition of the insurance proceeds must be recorded in the Mortgage file.

**58.10****Insurance loss  
settlements  
(continued)**

- ◇ The contractor, its subcontractors and its material suppliers will provide written acknowledgment of payment for work performed and materials supplied and the necessary lien waivers or releases so that the Mortgaged Premises may remain clear of all such liens and encumbrances.

- Each scheduled work phase has been satisfactorily completed in accordance with the plans and specifications before disbursement of payment for such phase is made in accordance with the contract

The Servicer may choose to have the above described oversight functions performed by its staff or by a third party (such as a specialized firm or another Servicer). However, the Servicer is liable for the performance of any third party it retains. The third party may be compensated from insurance proceeds retained by the Servicer only to the extent agreed to by the Borrower and allowed under applicable law.

---

**58.11****Disaster losses**

When a natural disaster (for example, earthquake, flood or hurricane) or a man-made disaster (for example, civil disturbance) strikes an area containing properties that secure Mortgages the Servicer services for Freddie Mac, the Servicer must promptly

1. Ascertain the number of such properties
2. Determine the extent of the losses or damages suffered by such properties
3. Secure any abandoned properties
4. Assist Borrowers in filing for property insurance claims and/or disaster assistance
5. Assist Borrowers through counseling and any appropriate repayment plan as provided under Sections 65.4B65.6 and as coordinated with the benefits of property insurance and/or disaster assistance

#### Disaster losses

#### (continued)

EDR
-----

6. Report to Freddie Mac [11] all Mortgages that are 30 or more days delinquent secured by properties that have suffered from disaster-caused losses via an Electronic Default Reporting (EDR) transmission. This report must be sent within the first three Business Days of the month following the occurrence of the disaster using default reason code 019 (casualty loss).
7. Report to Freddie Mac on all Mortgages that are subject to a repayment plan or a short or long-term forbearance plan resulting from disaster-caused involuntary inability to pay via an EDR transmission using default code 09 (Forbearance or repayment plan) within the first three Business Days of the month following the month that the plan was entered into. The Servicer must continue to report that the Mortgage is under the plan, until the Mortgage is fully reinstated or the plan ends. Refer to Chapter A65 for more details.

A Borrower to whom a repayment plan is extended because of disaster-related circumstances must not be

- Assessed late charges, as long as he or she is paying as agreed in the repayment plan
- Reported to credit repositories on account of making approved reduced or deferred payments

Collection, foreclosure and eviction proceedings may be suspended at the Servicer's discretion for up to 90 days from the date a disaster strikes, based on the relative merits of each case. Relevant factors would include the degree to which the disaster has reduced the Borrower's income, increased the Borrower's living expenses, damaged the Mortgaged Premises or limited the availability of alternative housing. When applicable, such a suspension of Servicing action must be preapproved by the MI, FHA or VA to avoid jeopardizing benefits of any applicable insurance or guaranty.

At the end of the 90-day period, the Servicer must reassess the individual Borrower's circumstances, based on property inspections and Borrower contacts, to determine whether a Mortgage repayment plan can be worked out or whether the proceedings should be initiated or resumed.

**Disaster losses  
(continued)**

In making such determinations, Servicers should consider the following options:

- Mortgage relief: Short-term forbearance and repayment plans do not require Freddie Mac's prior approval. Long-term forbearance requires our prior approval. Guidelines for these measures can be found in Chapter A65.
- Mortgage workout: A short payoff, workout Mortgage assumption, deed in lieu of foreclosure or chargeoff may be a viable option depending on the Borrower's particular circumstances. Freddie Mac's prior review and approval are required. Refer to Chapter B65. The Servicer's recommendation must include a detailed explanation of the Servicer's attempts to cure the default and the status of the property insurance claims and related claim proceeds.
- Foreclosure: In some cases, foreclosure may be the only option left and must be handled in accordance with Chapter 66. As a final step in avoiding foreclosure, however, the Servicer must inform the Borrower of and give the Borrower the opportunity to apply for FEMA Mortgage assistance, if the Mortgaged Premises are located in a presidential major disaster area and federal individual assistance has been made available to victims of the disaster.

Refer to Section 67.29, Servicing Mortgages on properties affected by disasters, for additional Servicing requirements. Information on federal disaster assistance can be found in Exhibit 52.

---

**Exhibit 52**  
**Federal Disaster Assistance**

**Presidential Declarations**

When disaster strikes and the President of the United States declares the affected area a major disaster area, federal individual assistance may be made available to disaster victims. Such assistance may be provided through programs such as

- Disaster Housing Program (Rental Assistance, Home Repair Assistance and Mortgage and Rental Assistance) administered by the Federal Emergency Management Agency (FEMA)
- Low-interest Small Business Administration (SBA) loans for homeowners and businesses
- Individual and Family Grant Program (administered by the State with FEMA oversight) for those disaster victims who do not qualify for SBA loans and have disaster-related serious needs and/or necessary expenses

This assistance is designed to supplement State and local assistance and the proceeds of insurance claimable under property insurance policies.

Mortgage and Rental Assistance (MRA), provided through FEMA's Disaster Housing Program, helps qualified applicants avoid foreclosure or eviction by providing grants for Mortgage or rent payments for a period of up to 18 months or for the duration of a demonstrated, disaster-related financial hardship, whichever is less. To qualify for MRA from FEMA, an applicant must

- Occupy and, following a disaster, continue to occupy the property as a Primary Residence (and the property must be sound, with minimal or no impact from the disaster)
- Have received a written foreclosure/eviction notice because of a disaster-related Delinquency
- Demonstrate that the inability to make Mortgage or rent payments is a result of disaster-related financial hardship

Once an area has been declared a presidential major disaster area and federal individual assistance is made available, FEMA may set up one or more interagency Disaster Recovery Centers (DRCs) in the disaster area to assist individuals with disaster-related questions. The sites of these DRCs will be announced via the local media.

Registrations for disaster assistance are taken by telephone. The numbers are:

- (800) 462-9029
- (800) 462-7585 (for the hearing impaired)

For inquiries about whether an area has been declared a presidential major disaster area, Seller/Serviceirs may contact FEMA at (202) 646-3260 or (202) 646-3629.

Borrowers should be aware that the President may declare an emergency or major disaster in which only the Public Assistance program is made available in designated areas. The Public Assistance program provides supplemental federal funding to State and local governments for a variety of projects, including clearance of debris, emergency protective measures and repair or replacement of public-owned facilities or structures. The Public Assistance program does not provide assistance to individuals or business owners.

### **SBA Disaster Declarations**

When the SBA Administrator declares a disaster loan area under SBA's statutory authority, homeowners and businesses of all sizes may be eligible for the same low-interest SBA loans that are available when a presidential major disaster declaration is made.

Such SBA loans include the following:

- A disaster home loan to a homeowner (or tenant) to repair or replace a Primary Residence/personal property that has been damaged or destroyed by the disaster
- A business physical disaster loan to a business of any size to repair or replace business property (including inventory and supplies) that has been damaged or destroyed by the disaster
- An economic injury disaster loan for working capital to assist a small business or a small agricultural cooperative through the disaster recovery period (provided the business or cooperative is unable to obtain similar financing from nongovernment sources)

Information regarding SBA disaster loans may be obtained from one of the following SBA Disaster Area Offices:

<b>Homeowners and businesses located in</b>	<b>Call</b>
Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, (United States) Virgin Islands, West Virginia	<b>Niagara Falls SBA</b> (800) 659-2955 OR (716) 282-4612
Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Wisconsin	<b>Atlanta SBA</b> (800) 359-2227 OR (404) 347-3771

<b>Homeowners and businesses located in</b>	<b>Call</b>
Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming	<b>Forth Worth SBA</b> (800) 366-6303 OR (817) 885-7600
Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Federated States of Micronesia, Nevada, Commonwealth of the Northern Mariana Islands, Oregon, Trust Territory of the Pacific Islands, Washington	<b>Sacramento SBA</b> (800) 488-5323 OR (916) 566-7240

**Federal Housing Administration Mortgage Insurance Programs**

The Federal Housing Administration (FHA) also insures loans made to disaster victims under the following programs:

- **Section 203(h), mortgage insurance for disaster victims:** to help a disaster victim purchase a residence to replace the residence that was destroyed or damaged to such an extent that reconstruction or replacement is necessary. The loan application must be submitted to the lender within one year of the date of the related presidential major disaster declaration. The residence to be financed by a Section 203(h) Mortgage must be
    - A one-unit property
    - The applicant's Primary Residence
- The replacement residence need not be located in the disaster area.
- **Section 203(k), rehabilitation mortgage insurance:** to help a disaster victim repair a disaster-damaged residence or reconstruct a disaster-destroyed residence
  - **Title I, property improvement and Manufactured Home loans:** to help a disaster victim repair, rebuild, or replace a disaster-damaged residence

Applications for the above loans must be submitted to a Department of Housing and Urban Development (HUD) approved mortgagee.

**NATIONAL FLOOD INSURANCE PROGRAM (NFIP)  
POLICY ISSUANCE 5-98**

**Subject:** 30-Day Waiting Period

**Effective Date:** October 1, 1998

This Policy Issuance updates the Federal Insurance Administration's interpretations of the applicability of the 30-day waiting period to various mortgage lending and insurance underwriting situations in Policy Issuance 8-95 (December 5, 1995). This Policy Issuance supercedes Policy Issuance 8-95 and provides answers to additional questions regarding the 30-day waiting period from Write Your Own companies and insurance agents. These interpretations are intended to serve the Congressional intent for the imposition of the 30-day waiting period for the purchase of flood insurance to prevent abuse (i.e., property owners would purchase insurance only when a flood was imminent) and to facilitate lender compliance with the mandatory purchase of flood insurance.

**Policy Decisions**

1. The 30-day waiting period will not apply when there is an existing insurance policy and an additional amount of flood insurance is required in connection with the making, increasing, extension, or renewal of a loan, such as a second mortgage, home equity loan, or refinancing. The increased amount of flood coverage will be effective as of the time of the loan closing, provided the increased amount of coverage is applied for and the presentment of additional premium is made at or prior to the loan closing.

Explanation: This interpretation is consistent with a basic objective of the National Flood Insurance Reform Act of 1994 (NFIRA), namely, to facilitate lender compliance with the statutory requirements for flood insurance. The 30-day waiting period was established to prevent abuse by insureds from increasing coverage when flooding was imminent. The exemptions to the waiting period on the other hand were for loan closing situations and to facilitate lender compliance with the flood insurance purchase requirements. [Note: This policy interpretation has been retained from Policy Issuance 8-95 (December 5, 1995) and has not changed.]



2. The 30-day waiting period will not apply when an additional amount of insurance is required as a result of a map revision. The increased amount of coverage will be effective 12:01 a.m. on the first calendar day after the date the increased amount of coverage is applied for and the presentment of additional premium is made.

Explanation: This interpretation is also consistent with a basic objective of the NFIRA to facilitate lender compliance with the statutory requirements for flood insurance. The purchase of additional flood insurance is to comply with the statutory requirement for flood insurance in an amount equal to the outstanding principal balance of the loan for a property owner who was prudent enough to buy voluntarily flood insurance but now must increase the amount to comply with statutory requirements for flood insurance resulting from a Federal Emergency Management Agency map change. [Note: This policy interpretation has been retained from Policy Issuance 8-95 (December 5, 1995) and has not changed.]

3. The 30-day waiting period will not apply when flood insurance is required as a result of a lender determining that a loan which does not have flood insurance coverage should be protected by flood insurance as required by Section 102(e) of the Flood Disaster Protection Act of 1973, as amended by NFIRA, because the building securing a loan is located in a Special Flood Hazard Area. The coverage will be effective upon completion of an application and the presentment of payment of premium.

Explanation: The interpretation is consistent with the purpose of the NFIRA to ensure compliance with the statutory requirements for flood insurance protection for property the subject of Federal or federally-related financial assistance even when the discovery is made by lender that flood insurance is required after the loan has closed. It is immaterial whether the lender's discovery of the need for flood insurance results from a scheduled mortgage loan portfolio review or a review of an individual loan file. [Note: This interpretation has been modified from that contained in Policy Issuance 8-95 to now provide that an exemption from the 30-day waiting period applies only to loans in Special Flood Hazard Areas, i.e., those loans for which the statute requires flood insurance.]

4. The 30-day waiting period does not apply when an additional amount of insurance is requested at renewal time that is no more than the amount of increase recommended by the insurer

on the renewal bill to keep pace with inflation. The increased amount of coverage will be effective at 12:01 a.m. on the date of policy renewal provided the premium for the increased coverage is received before the expiration of the grace period. The 30-day waiting period applies to any additional amount of insurance requested at renewal time that is higher than any amount of increase offered on the renewal bill provided by the insurer. The beginning of the waiting period is determined by the normal rules. In the event that the insurer is unable to determine the application date and the presentment of premium, the insurer must use the premium receipt date in establishing the effective date for the increased coverage.

Explanation: To permit an insured to increase flood coverage to the amount recommended by the insurer as a safeguard against inflation without the 30-day waiting period is consistent with insurance industry practices and does not create a loophole for the kind of abuse Congress specifically wanted to prohibit with the statutory 30-day waiting period. To apply the 30-day waiting period in situations when a policyholder wants to significantly increase the amount of insurance beyond the amount recommended by the insurer to keep pace with inflation is in keeping with Congressional intent. [Note: This policy interpretation has been modified from that contained in Policy Issuance 8-95 to now provide that the 30-day waiting period applies to any additional amount of insurance requested at renewal time that is higher than any amount of increase offered on the renewal bill provided by the insurer.]

5. The waiting period does not apply to a renewal offer to the insured for the next higher limits available under PRP.

Explanation: This interpretation is consistent with other interpretations in this Issuance that exempt from the 30-day waiting period modest increases in coverage that are comparable to the inflation adjustment recommended by insurers at renewal.

6. The 30-day waiting period does not apply when an insured decides to rewrite the existing policy at the time of renewal from Standard to a Preferred Risk Policy (PRP), provided that the selected PRP coverage limit amount is no higher than the next highest PRP amount above that which was carried on the Standard policy using the highest of building and contents coverage. In those cases where the

Standard policy has only one kind of coverage, either building or contents only, the 30-day waiting period applies.

In addition, if the structure is no longer eligible under the PRP or the insured decides to rewrite the existing PRP at renewal time to a Standard policy, the 30-day waiting period does not apply provided the coverage limit amount is no more than the previous PRP coverage amount or the next highest PRP amount above that.

Explanation: The change in coverage that results from converting a Standard Policy to a PRP or from converting a PRP to a Standard Policy with the limitations set forth above results in only a modest increase of flood insurance coverage--roughly equal to the amount of increase in No. 4 above.

7. Unless the contents are part of the security for a loan, the 30-day waiting period applies to the purchase of only contents coverage by a condominium unit owner at the time of the loan, i.e., where building coverage is not being purchased by the unit owner.

Explanation: Since the mandatory purchase of flood insurance applies only to property--real improved and/or any personal property--which is securing a loan, then a condominium unit owner who exercises his or her own option to buy insurance and is not responding to a lender's mandatory purchase decision is subject to the 30-day waiting period. This interpretation is consistent with other situations where an exemption to the 30-day waiting period applies only in situations to facilitate lender compliance with NFIRA.

8. Provided that the application and premium are received before an anniversary date, the 30-day waiting period does not apply to a cancel/rewrite of a 3-year policy at an anniversary date to obtain Increased Cost of Compliance (ICC) coverage.

Explanation: ICC coverage became effective for all new or renewal policies with effective dates on and after June 1, 1997. Those policyholders with 3-year policies without being able to cancel and rewrite in order to obtain ICC coverage would be delayed unnecessarily from obtaining coverage that Congress mandated under the NFIRA.

9. The insurer may rely on an agent's representation on the application that the loan exception applies unless there is a loss during the first 30 days of the policy period. In that case, the insurer must obtain documentation of the loan transaction, such as settlement papers, before adjusting the loss.

Explanation: It would be inconsistent with the intent of Congress for the NFIP to impose burdensome and time-consuming documentation requirements for the agent during the application process, in the case of loan transactions which Congress specifically wanted to exempt from the 30-day waiting period. Requiring documentation if a loss occurs during the first 30 days, however, assures that there will be no abuse of the rule.

10. The 30-day waiting period does not apply to a reduction of the deductible effective as of the renewal date.

Explanation: The amounts involved are comparable to the modest inflation adjustments recommended by the insurer at renewal.

## **Mandatory Purchase of Flood Insurance Guidelines**

---

In order to provide a reasonable period of time for the insurers to comply with the new Policy Decisions (5 through 10), the effective date for Policy Decisions 5 through 10 is October 1, 1998.

---

9/8/98

DATE

---

/s/ Jo Ann Howard

Jo Ann Howard

Federal Insurance Administrator

**Appendix A--Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program; Mortgage Portfolio Protection Program, Write Your Own Company Guidelines and Requirements**

**Background**

The Mortgage Portfolio Protection Program (MPPP) was introduced on January 1, 1991, as an additional tool, provided by the Federal Insurance Administration (FIA), to assist the mortgage lending and servicing industries, in response to their requests of the past few years, in bringing their mortgage portfolios into compliance with the flood insurance requirements of the Flood Disaster Protection Act of 1973.

The MPPP is not intended to act as a substitute for the need for mortgagees to review all mortgage loan applications at the time of loan origination and comply with flood insurance requirements as appropriate.

It is expected that the proper implementation of the various requirements of this MPPP will result in mortgagors, following their notification of the need for flood insurance, to either show evidence of such a policy, or to contact their local insurance agent or appropriate Write Your Own (WYO) company to purchase the necessary coverage. It is also intended that flood insurance policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notifications required by this MPPP.

The following represents the criteria and requirements that must be followed by all parties engaged in the sale of flood insurance under the National Flood Insurance Program's Mortgage Portfolio Protection Program:

**Requirements for Participating in the MPPP**

**1. General**

- a. All mortgagors notified, in conjunction with this Program, of their need to purchase flood insurance must be encouraged to obtain a Standard Flood Insurance Policy (SFIP) from their local agent.
- b. When a mortgagee or a mortgage servicing company discovers, at any time following loan origination, that one or more of the loans in its portfolio is determined to be located in a Special Flood Hazard Area (SFHA), and that there is no evidence of flood insurance on such property (ies), then the MPPP may be used by such lender/servicer to obtain (force place) the required flood insurance coverage. The MPPP process can be accomplished with limited underwriting information and with special flat flood insurance rates.

- c. In the event of a loss, the policy will have to be reformed if the wrong rate has been applied for the zone in which the property is located. Also, the amount of coverage may have to be changed if the building occupancy does not support that amount.
- d. It will be the WYO company's responsibility to notify the mortgagor of all coverage limitations at the inception of coverage and to impose those limitations that are applicable at the time of loss adjustment.

### **2. WYO Arrangement Article III--Fees**

With the implementation of the MPPP, there is no change in the method of WYO company allowance from that which is provided in the Financial Assistance/Subsidy Arrangement for all flood insurance written.

### **3. Use of WYO Company Fees for Lenders/Servicers or Others**

- a. No portion of the allowance that a WYO company retains under the WYO Financial Assistance/Subsidy Arrangement for the MPPP may be used to pay, reimburse or otherwise remunerate a lending institution, mortgage servicing company, or other similar type of company that the WYO company may work with to assist in its flood insurance compliance efforts.
- b. The only exception to this is a situation where the lender/servicer may be actually due a commission on any flood insurance policies written on any portion of the institution's portfolio because it was written through a licensed property insurance agent on their staff or through a licensed insurance agency owned by the institution or servicing company.

### **4. Notification**

- a. WYO Company/Mortgagee-Any WYO company participating in the MPPP must notify the lender or servicer, for which it is providing the MPPP capability, of the requirements of the MPPP. The WYO company must obtain signed evidence from each such lender or servicer indicating their receipt of this information, and keep a copy in its files. An example of such evidence of receipt follows as Addendum #5.
- b. Mortgagee to Mortgagor-In order to participate in the MPPP, the lender (or its authorized representative, which will typically be the WYO company providing the coverage through the MPPP) must notify the borrower of the following, at a minimum:

- (1) The requirements of the Flood Disaster Protection Act of 1973,

- (2) The flood zone location of the borrower's property,
- (3) The requirement for flood insurance,
- (4) The fact that the lender has no evidence of the borrower's having flood insurance,
- (5) The amount of coverage being required and its cost under the MPPP, and
- (6) The options of the borrower for obtaining conventionally underwritten flood insurance coverage and the potential cost benefits of doing so.

A more detailed discussion of the notification requirements is made a part of this program document in both Section 15 and as Addendums 1 and 2.

### **5. Eligibility**

- a. Type of Use-The MPPP will be allowed only in conjunction with mortgage portfolio reviews and the servicing of those portfolios by lenders and mortgage servicing companies. The MPPP is not allowed to be used in conjunction with any form of loan origination.
- b. Type of Property-The standard NFIP rules apply, and all types of property eligible for coverage under the NFIP will be eligible for coverage under the MPPP.

### **6. Source of Offering**

The force placement capability will be offered by the WYO companies only and not by the NFIP Servicing Agent (National Con-Serv [NCSI]).

### **7. Dual Interest**

The policy will be written covering the interest of both the mortgagee and the mortgagor. The name of the mortgagor must be included on the Application Form. It is not, however, necessary to include the mortgagee as a named insured because the Mortgage Clause (Article 9.P of the Dwelling Form and Article 8.L of the General Property Form) affords building coverage to any mortgagee named as mortgagee on the Flood Insurance Application. If contents coverage for the mortgagee is desired, the mortgagee should be included as a named insured.

### **8. Term of Policy**

NFIP policies written under the MPPP will be for a term of one year only (subject to the renewal notification process).



### **9. Coverage Offered**

Both building and contents coverage will be available under the MPPP. The coverage limits available under the Regular Program will be \$250,000 for building coverage and \$100,000 for contents. If the WYO company wishes to provide higher limits that are available to other occupancy types such as other residential or non-residential, it may do so only if it can indicate that occupancy type as appropriate. If the mortgaged property is in an Emergency Program Community, then the coverage limits available will be \$35,000 for building coverage and \$10,000 for contents. Again, if the higher limits are desired for other types of property, then the building occupancy type must be provided at the inception of the policy or when that information may become available, but it must be prior to any loss.

### **10. Policy Form**

The current SFIP Dwelling Form and General Property Form will be used, depending upon the type of structure insured. In the absence of building occupancy information, the Dwelling Form should be used.

### **11. Waiting Period**

The NFIP rules for the waiting period and effective dates apply to the MPPP.

### **12. Premium Payment**

The current rules applicable to the NFIP will apply. The lender or servicer (or Payor) has the option to follow its usual business practices regarding premium payment, so long as the NFIP rules are followed.

### **13. Underwriting--Application**

- a. The MPPP will require less underwriting data than is normally required under the standard NFIP rules and regulations. The MPPP data requirements for rating, processing and reporting are, at a minimum:
  - (1) Name and mailing address of insured (mortgagor-also see Dual Interest),
  - (2) Address of insured (mortgaged) property,
  - (3) Community information (complete NFIP map panel number and date; program type, Emergency or Regular) countywide maps,
  - (4) Occupancy type (so statutory coverage limits are not exceeded. This data may be difficult to obtain. Also see Coverage Offered.),

- (5) NFIP flood zone where property is located (lender must determine, in order to determine if flood insurance requirements are necessary and to use the MPPP),
  - (6) Amount of coverage,
  - (7) Name and address of mortgagee,
  - (8) Mortgage loan number,
  - (9) Policy number.
- b. No elevation certificates will be required as there will be no elevation rating.
  - c. For more detailed information regarding reporting requirements, see the WYO Transaction Record Reporting and Processing (TRRP) Plan.

**14. Rates (per \$100 of insurance)**

---

<u>Zone</u>	<u>Building</u>	<u>Contents</u>
A Zone -All building/occupancy types	\$1.25	\$1.25
V Zone -All building/occupancy types	\$3.00	\$3.00
A99, AR, and AR Dual Zones –All building/occupancy types	\$ .35	\$ .35

---

**15. Policy Declaration Page Notification Requirements**

In addition to the routine information, such as amounts of coverage, deductibles and premiums, that a WYO company may place on the Policy declarations page issued to each insured under the NFIP, the following messages are required:

- a. This policy is being provided for you as it is required by Federal law as has been mentioned in the previous notices sent to you on this issue. Since your mortgage company has not received proof of flood insurance coverage on your property in response to those notices, we provide this policy at their request.
- b. The rates charged for this policy may be considerably higher than those that may be available to you if you contact your local insurance agent (or the WYO company at ...).

- c. The amounts of insurance coverage provided in this policy may not be sufficient to protect your full equity in the property in the event of a loss.
- d. You may contact your local insurance agent (or WYO company at ...) to replace this policy with a conventionally underwritten Standard Flood Insurance Policy, at any time, and typically at a significant savings in premium.

The WYO company may add other messages to the declarations page and make minor editorial modifications to the language of these messages if it believes any are necessary to conform to the style or practices of that WYO company, but any such additional messages or modifications may not change the meaning or intent of the above messages.

Since the amount of underwriting data obtained at the time of policy inception will typically be limited, the extent of any coverage limitations (such as, when replacement coverage is not available or coverage is limited because the building has a basement or is considered an elevated building with an enclosure) will be difficult to determine. It is, therefore, the responsibility of the WYO company to notify the mortgagor/insured of all coverage limitations at the inception of coverage and impose any that are applicable at the time of the loss adjustment.

### **16. Policy Reformation--Policy Correction**

Article 9.F.2. of the Dwelling Policy and Article 8.E.2. of the General Property Policy will apply as appropriate.

Examples of circumstances under which reformation or correction might be needed would be:

Policy Reformation-The wrong flat rate was applied for the zone in which the property was actually located.

Policy Correction-The amount of coverage exceeds the amount available under the NFIP for the type of building occupancy that represents the building insured. In such cases, the amount of coverage would have to be adjusted to the amount available and any appropriate premium adjustments made.

### **17. Coverage Basis--Actual Cash Value or Replacement Cost**

There are no changes from the standard practices of the NFIP for these provisions. The coverage basis will depend on the type of occupancy of the building covered and the amount of coverage carried.

**18. Deductible**

A \$500 Deductible is applicable for policies written under the MPPP.

**19. Expense Constant and Federal Policy Fee**

There is no change from the standard practice. The Expense Constant and Federal Policy Fee in effect at the time the MPPP policy is written must be used.

**20. Renewability**

The MPPP policy is a one-year policy. Any renewal of that policy can occur only following the full notification process spelled out in addendum #2 that must take place between the lender (or its authorized representative) and the insured/mortgagor, when the insured/mortgagor has failed to provide evidence of obtaining a substitute flood insurance policy.

**21. Cancellations**

The NFIP Flood Insurance Manual rules for Cancellation/Nullification are to be followed.

**22. Endorsement**

An MPPP policy may not be endorsed to convert it directly to a conventionally underwritten SFIP. Rather, a new policy application, with a new policy number, must be completed according to the underwriting requirements of the SFIP, as contained in the NFIP Insurance Manual. The MPPP policy may be endorsed to assign it under rules of the NFIP. It may also be endorsed for other reasons such as increasing coverage.

**23. Assignment to a Third Party**

Current NFIP rules remain unchanged; therefore, an MPPP policy may be assigned to another mortgagor or mortgagee. Any such assignment must be through an endorsement, however.

**24. Article XIII--Restrictions Other Flood Insurance**

ARTICLE XIII of the Arrangement is also applicable to the MPPP and, as such, does not allow a company to sell other flood insurance that may be in competition with NFIP coverage. This restriction, however, applies solely to policies providing flood insurance. It also does not apply to insurance policies provided by a WYO company in which flood is only one of several perils provided, or when the flood insurance coverage amounts are in excess of the statutory limits provided under the NFIP or when the coverage itself is of such a nature that it is unavailable under the NFIP, such as blanket portfolio coverage.

**Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements  
Addendum #1**

**Initial Portfolio Review Letter Notification Process**

Once it has been determined by the lender/servicer or its representative that flood insurance is needed on mortgages in the lender's portfolio, and there is no evidence of flood insurance, and it decides to use FIA's MPPP to assist in bringing the lender's portfolio into compliance with flood insurance, then the following notification process must be used.

This process will consist of three initial notification letters. Each letter will contain certain messages, at a minimum, in the body of the letter. The lender/servicer (or their authorized representative) may add their own messages, make minor editorial modifications to the messages to conform to the style and practice of the WYO company or lender and structure the letter to their liking, but they may not alter the meaning or intent of the messages listed here for any of the letters.

Each letter will contain mandatory messages on one or more of the following items: (1) The requirements of the Flood Disaster Protection Act of 1973, (2) reminding the insured of the previous letters sent that resulted in the current flood insurance policy, (3) the high premiums on the current policy, (4) potentially inadequate coverage limits, (5) coverage limitations, and (6) the options available to the insured.

**Initial Notification Letter to Mortgagor**

The first letter is to be issued after the review of the lender's portfolio reveals the need for the flood insurance coverage and the absence of it. This letter must contain, at a minimum, the following messages:

1. "The Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained on mortgage loans for buildings (and their contents, if appropriate) for the life of the loan for buildings located in a Special Flood Hazard Area shown on a map published by FEMA. This applies to such loans from lending institutions that are under the jurisdiction of a Federal regulatory agency or instrumentality."
2. "We have determined that your property (building), on which we hold the mortgage loan, is located in a SFHA and, therefore, you are required by law to have a policy of flood insurance on that property."

## **Mandatory Purchase of Flood Insurance Guidelines**

---

- This letter must then include language advising the mortgagor that in the event they wish to challenge the zone determination, they should provide written factual evidence supporting their challenge obtained from a community official, registered engineer, architect or surveyor, stating the specifics of the location of the building and the reason for their challenge. The letter must include reference to the appeal process required in Section 524 of the National Flood Insurance Reform Act of 1994, after regulations are promulgated to establish the procedures and process for such review. FEMA expects to issue the regulations by late October 1995.
  - The lender/servicer is reminded that since the Act places the responsibility of determining the flood zone location of each mortgaged property on the lender/servicer, he cannot discharge that responsibility by simply obtaining some form of self certification from the mortgagor. If the lender wishes to change its original determination on the location of the mortgagor's property based upon information submitted by the mortgagor, the lender/servicer must convince itself, after reviewing that submission, that its original determination was in error and make any such change based on that review. He should not simply accept unsubstantiated allegations, from whatever source, as to the building's flood zone location. The ultimate responsibility for making such determinations under the statute rests with the mortgagee, not the mortgagor.
3. "There is no evidence in your mortgage loan file of your having a flood insurance policy on your property. In case this information is in error, please contact us at \_\_\_\_\_."
  4. "If you do not have a flood insurance policy on this property, you may wish to contact your local insurance agent (or WYO company at ...)."
  5. "If you do not respond within 45 days of this letter, either providing evidence of a flood insurance policy in effect on this property, or requesting that we provide you with such coverage, the necessary flood insurance coverage will be provided for you. In that event, since certain insurance underwriting information about your property that is necessary to determine the appropriate flood insurance rate for your policy would not have been obtained, due to your not responding, the Federal government's Mortgage Portfolio Protection Program's flood insurance rates will have to be used. These rates may be considerably higher than those that could be obtained for you if you respond to this notice."

## **Federal Emergency Management Agency**

---

This letter, or an attachment, must also include such other information as: (1) the name of the lender/servicer, (2) the mortgage loan number, (3) the address of the property in question, (4) the flood zone in which the property has been determined to be located, (5) the amount of flood insurance being required, and (6) coverage limitations.

### **The Second Initial Notification Letter**

This letter will be sent 30 days following the first initial notification letter if no response has been received from the mortgagor. It will contain, at a minimum, the following messages:

1. "About a month ago you were notified that Federal law requires all mortgages, such as yours, on properties determined to be located in a Special Flood Hazard Area, to be covered by a policy of flood insurance."
2. "That letter mentioned that if you did not respond positively within 45 days from that letter, it would be necessary to obtain a policy of flood insurance for you."
3. "This is to remind you that since you have not responded to the earlier notice as yet, and if you do not respond within the next fifteen days (or the actual expiration date), flood insurance, as mentioned previously, will be obtained on your property, on your behalf."
4. "In the event that you do not respond and the coverage must be obtained as mentioned, the cost of that coverage may be significantly higher than the premium that you could obtain if you were to contact your local insurance agent (or WYO company at...)."

### **Third and Final Initial Notification Letter**

This letter must be sent to the mortgagor accompanying the flood insurance policy declarations page.

This letter must be sent as soon after the end of the 45 day notification period as possible, if no positive response has been received to the two previous notification letters. It must contain the following messages, at a minimum:

1. "This letter is to inform you that a policy of flood insurance has been obtained on your behalf, to cover the mortgage on your property, as required by the Flood Disaster Protection Act of 1973."



## **Mandatory Purchase of Flood Insurance Guidelines**

---

2. "You have been notified on two previous occasions explaining the circumstances surrounding your need to have flood insurance coverage and explaining your options, but to date no response has been received."
3. "Attached is the flood insurance policy purchased on your behalf and its accompanying declarations page that explains: the amount of coverage purchased on your behalf, its cost, some limitations to that coverage, and the options you may still wish to exercise to obtain similar coverage, but typically at a significantly lower cost."
4. "If you purchase another flood insurance policy and notify us, or contact us to request that we purchase a substitute policy under the NFIP for you, we will cancel this policy and issue you a refund for the unearned portion of the premium, if we deem that the other policy is acceptable to satisfy the requirements."

**Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements  
Addendum #2**

**MPPP Renewal/Expiration Notification Process**

When an MPPP policy has been purchased and the expiration date of that policy is approaching the end of its one year term, and the insured has not requested or produced a substitute policy of flood insurance, the following notification process will be followed.

This process will consist of a total of three (or, at the lender's option, two) renewal MPPP letters. Each letter will contain certain required messages within the body of the letter. The lender/servicer (or their authorized representative) may add their own messages, make minor editorial modifications to the messages to conform to the style and practice of the WYO company or lender and structure the letter to their liking, but they may not alter the meaning or intent of the messages listed here for any of the letters.

Each letter will contain mandatory messages on one or more of the following items: (1) reminding the insured of the previous letters sent that resulted in the current flood insurance policy that is about to expire; (2) the requirements of the Flood Disaster Protection Act of 1973; (3) the high premiums on the current policy; (4) potentially inadequate coverage limits; (5) coverage limitations, and (6) the options available to the insured.

**First MPPP Renewal/Expiration Notice (Letter)**

The first MPPP renewal letter will be sent to the insured/mortgagor at least 45 days prior to the renewal/expiration of the MPPP policy. It will, at a minimum, contain the following messages:

1. "This letter is to notify you that the flood insurance policy that was required to be purchased on your property about a year ago is about to expire."
2. "When you were originally notified of the need for this coverage, it was explained that the Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained for the life of the loan, on mortgage loans for buildings (and their contents, if appropriate) located in a Special Flood Hazard Area shown on a map produced by the Federal Emergency Management Agency."

3. "The premium on the flood insurance policy currently in effect and written on your behalf, and due to expire, may be considerably higher than would be the case if you had responded to the suggestions contained in the previous notices sent you, recommending that you contact your local insurance agent (or the WYO company at...), which you may still do, to obtain a conventionally underwritten Standard Flood Insurance Policy."
4. "As has been mentioned in previous notices, you may wish to replace this policy with a conventionally underwritten Standard Flood Insurance Policy now, and benefit from rates that potentially are significantly lower than the rates being used with this policy."
5. "Failure to respond to this notice within 45 days (or by [date]) will result in this policy being renewed, and at rates that are most likely to be much higher than are otherwise available."

### **Second MPPP Renewal/Expiration Notice (Letter)**

The requirement for the Second MPPP Renewal/Expiration Notice (Letter) is optional on the part of the participating WYO company. If such a company decides not to issue the second of the three notices (letters), then the Third MPPP Renewal/Expiration Notice (Letter) required in the March 1, 1991, Federal Register will serve as the second and final notice required. The language of such a letter may be modified, if needed, to reflect the fact that only two such letters were sent.

### **Third MPPP Renewal/Expiration Notice (Letter)**

The third and final notice will be sent out as part of the renewed MPPP policy. The notice containing the following required messages may be sent as a cover letter or an attachment to the Policy declarations page and policy itself, or the required messages may be included on the declarations page that accompanies the renewal policy. It must contain the following messages:

1. "Since you have not responded to our previous notices that your flood insurance policy, which is required by Federal law, was about to expire, we have renewed that policy for the next year."
2. "As has been previously explained, the Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained on mortgage loans for buildings (and their contents, if appropriate) for the life of the loan, for property located in a Special Flood Hazard Area shown on a map produced by the Federal Emergency Management Agency."

3. "The premium on this flood insurance policy just renewed may be considerably higher than would be the case if you had contacted your local insurance agent (or WYO company at ...), which you may still do, to obtain a conventionally underwritten Standard Flood Insurance Policy."
4. "If you purchase another flood insurance policy and notify us, or contact us to request that we purchase a substitute policy under the NFIP for you, we will cancel this policy and issue you a refund for the unearned portion of the premium, if we deem that the other policy is acceptable to satisfy the requirements."

**National Flood Insurance Program Mortgage Portfolio Protection Program (MPPP)  
Addendum #3**

**Portfolio Review Considerations for Lenders/Service Providers Prior to Participating in the  
MPPP--Questions and Answers**

1. Q. What is the MPPP and who is this Q & A aimed at?
  - A. The MPPP is a tool for providing flood insurance coverage to properties which are part of a lending institution's mortgage portfolio when such properties have been determined to be in a Special Flood Hazard Area and therefore subject to the flood insurance purchase requirement mandated by Federal law. The MPPP is aimed at WYO companies, lenders/service providers participating in the MPPP, Federal regulatory agencies and other interested parties.
2. Q. What is the first step in using the MPPP?
  - A. The MPPP is only intended to be utilized when the lender (or its representative) has reviewed its portfolio and determined which of the loans are on buildings located in a Special Flood Hazard Area (SFHA), and, therefore, in need of flood insurance.
3. Q. What source of information should the MPPP participant, or their authorized representative, be using in reviewing a loan portfolio, to determine flood zone location of the properties in question?
  - A. The flood insurance maps published by the Federal Emergency Management Agency (FEMA), augmented by other official documentation available from local officials or other sources, as may be deemed necessary.

The Flood Disaster Protection Act of 1973, which imposes the flood insurance requirement, makes specific reference to "areas identified by the Secretary (since changed to Director [of FEMA]) as an area having special flood hazards". The National Flood Insurance Act of 1968, as amended, charged FEMA with the responsibility of identifying areas which have special flood hazards. Therefore, the official source of information that serves as the basis for identifying such areas is the maps published by FEMA.
4. Q. What if a source of information other than the FEMA maps is used as the basis for determining the flood zone location of properties?

- A. The lender may be risking erroneous determinations, thereby potentially placing the lender in a position of a liability exposure, bad customer relations and/or problems with its Federal regulatory agency or worse.
5. Q. Does it mean that if the system used to make these flood zone determinations is not based on the FEMA maps that it should not be used?
- A. Due to the potential for problems as mentioned above, the lender must be careful as to the basis behind the system it uses to make these flood zone determinations. Also, since the lender must keep evidence of the determination in every mortgage file, if that evidence doesn't reflect the map panel used to make the determination, the lender may have difficulty proving to its Federal regulatory agency, or in court if the need arose, that the lender is complying with the law.
6. Q. What flood zone determination information should the lenders keep in each mortgagor's file to indicate evidence of compliance?
- A. Pursuant to Section 528 of the National Flood Insurance Reform Act of 1994, FEMA is developing a Standard Flood Hazard Determination Form (SFHDF) for use by lenders when determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in a special flood hazard area. The SFHDF contains a section for recording flood zone determination information. FEMA expects to issue the regulation establishing the SFHDF by late June 1995. All lenders subject to the Reform Act will have to place a copy of the SFHDF in each mortgagor's file to indicate evidence of compliance.
7. Q. What version of the flood map should be used in conjunction with the MPPP portfolio review?
- A. The FEMA map in effect at the time of the portfolio review is the map that must be used. The provisions of the Flood Disaster Protection Act of 1973 as amended by the Reform Act (1) require the lender to notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, if, at any time during the term of the loan, the lender determines the improved real estate or mobile home securing the loan is located in an area identified by FEMA as an area having special flood hazards and in which flood insurance is available but the property is not covered by flood insurance; and (2) require the lender to purchase coverage on behalf of the borrower if the borrower fails to purchase such flood insurance within 45 days after notification by the lender.

8. Q. Doesn't the fact that the MPPP was designed to assist lenders/servicers in bringing their portfolios into compliance with flood insurance requirements mean that they will be dealing with loans that can range from being very new to being many years old, and that the maps that may have been in effect at the time of the loan origination might not be readily available now?
- A. Yes. This does not present a problem since, as mentioned in no. 7 above, compliance with the requirements of the Reform Act requires use of the map in effect at the time of the review rather than the map in effect at the time of the loan origination.
9. Q. Once the lender/servicer's portfolio has been reviewed and determinations have been made as to which properties need flood insurance, is there anything critical that the lender (or its representative) should consider before beginning the process of mailing the initial notices to their mortgagors?
- A. Yes, how the mailing will be handled and the results of that mailing. There is a strong likelihood that, once the mailings begin, a certain percentage of the mortgagor recipients of those notices will challenge the notices. Some of those challenges will be directed, in one way or another, to the lender/servicer, regardless of any instructions in the notices. The lender should therefore determine at the outset whether it wants the notices to be sent all at once, or metered out so many at a time. The larger the volume, the more consideration to the metering approach that should be given.

Also, the lender needs to consider how it wants the review of its portfolio carried out. If the results of the review are provided to the lender all at the same time and the lender decides to send the notices to the mortgagors so many at a time, it may be exposing itself to additional liability. This could occur since the lender was aware of all the mortgages in its portfolio that needed flood insurance, but acted on only a certain number at a time. The lender, therefore, needs to consider having the portfolio review carried out in such a fashion that the results of each portion of that review are made available to the lender as soon as they are available from the party conducting the review, and are acted upon as soon as possible thereafter.

**National Flood Insurance Program Mortgage Portfolio Protection Program (MPPP)  
Questions and Answers  
Addendum #4**

1. Q. What is the MPPP and what is it designed to do?
  - A. The MPPP is a tool made available to the lending and mortgage servicing industries that provides them with the capability to write flood insurance policies quicker and easier that will assist them with their efforts to bring their portfolios into compliance with flood insurance requirements.
2. Q. Is this available to lenders for all their loans?
  - A. No! It may only be used in conjunction with loan portfolios. It may not be used as a compliance vehicle for loan originations.
3. Q. Is the MPPP mandatory for lenders/servicers?
  - A. No! It is voluntary, but lenders/servicers that believe their loan portfolios may not be in compliance with flood insurance requirements are strongly encouraged to use it if they believe it could be helpful.
4. Q. What are the benefits of the MPPP?
  - A. The specific benefits will vary with the category of participant as follows.

For lenders/servicers:

    - Portfolios can be brought into compliance satisfying the law and regulators.
    - Reduce, limit or eliminate certain potential liability.
    - Protect equity (lender/servicer, borrower).

For WYO companies:

    - Increased policy sales/fees.
    - Increased lender/servicer client base.

For insurance agents:

    - Increased policy sales.



5. Q. Is it possible for WYO companies and insurance agents to benefit from the MPPP even if they don't directly participate in it?

A. Yes! Property insurance (fire and auto) is already being sold by insurance agents to many of these same borrowers because lenders require it in conjunction with home mortgages and auto loans. As a result, many agents already have established business relationships with their local lenders. These agents could alert these lenders to the availability of the MPPP and advise them as to how to proceed even if the agent was not going to directly participate.

At the same time the agent could offer to assist the lender with determining the flood zone location of the addresses of all new mortgage loan applications for that lender and ask, in return, for the opportunity to write all the flood insurance policies on those properties that are determined to need it. The notices that will be sent to the borrowers will generate inquiries and sales.

6. Q. How will flood policies actually be sold under the MPPP?

A. Policies will be written through the insurance companies participating in FIA's Write Your Own (WYO) Program.

7. Q. Will all the insurance companies participating in the WYO Program be writing policies under the MPPP?

A. Any WYO company may write policies under the MPPP, but only those that traditionally have dealt with the lending industry are expected to participate in this Program. Any such company that does wish to participate must agree in writing to comply with the requirements of the MPPP.

8. Q. Will FIA maintain and publish a list of the WYO companies that participate in the MPPP?

A. Yes! Such a list will be developed and both modified and republished as needed.

9. Q. What is the first thing a lender/servicer should do if it wishes to utilize the MPPP?

A. The lender must review its loan portfolio and determine which of the properties are located in Special Flood Hazard Areas (SFHA).

10. Q. When a lender/servicer decides to utilize the MPPP, must they use the MPPP to service their portfolio all at the same time?

- A. No! Lenders/servicers should carefully analyze the pros and cons of phasing in their portfolio compliance effort. (See the Q & A that FIA has developed on "Portfolio Review Considerations.")
11. Q. Is use of the MPPP limited to only those properties located in SFHAs?
- A. Yes!
12. Q. What will happen if a policy is written through the MPPP, but the property is not located in an SFHA?
- A. If no loss has occurred at the time the situation is discovered but the mortgagee wants the borrower to have flood insurance even though the property is not in an SFHA, the situation can be corrected by cancelling the MPPP policy and rewriting the coverage under a conventional Standard Flood Insurance Policy (SFIP) with a refund of any premium overpayment. If such a situation is discovered after a flood loss has occurred, the claim will be honored. However, the MPPP policy would have to be cancelled and the coverage rewritten under a conventional SFIP with a refund of any premium overpayment. The loss should then be reported under the new policy number. Under both scenarios, the effective date of the conventional SFIP would be the same as that of the cancelled MPPP policy.
13. Q. What differences are there between a flood policy sold under the traditional flood insurance program and one under the MPPP?
- A. The actual policy and coverage are the same, but there are differences primarily in the areas of:
- rates,
  - a letter notification process to the borrowers,
  - the underwriting information necessary.
14. Q. What are the rate differences?
- A. The rates under the MPPP are, on the average, several times those used under the traditional flood insurance program.
15. Q. Why are the MPPP rates so high?

- A. Due to the fact that the borrower did not respond to the notices sent, key information necessary to underwrite the risk is not available. Therefore, it is necessary to assume that those properties have a very high risk and the rates charged reflect that risk.
16. Q. Does the borrower have any option in avoiding the MPPP policy with its higher cost?
- A. Yes! They can simply contact their local insurance agent, obtain a conventionally underwritten flood insurance policy and present it to their lender/servicer.
17. Q. If a borrower pays off the mortgage loan, can the MPPP then be cancelled?
- A. Yes, but any refund due the borrower will be paid on a pro-rata basis.
18. Q. If the borrower or lender/servicer sells or assigns the mortgage to another borrower or lender/servicer, can the MPPP policy be assigned?
- A. Yes! The Standard Flood Insurance Policy language allows for the assignment of all NFIP policies. Any such assignment of an NFIP policy must be done by way of an endorsement.
19. Q. Must a WYO company participating in the MPPP maintain copies of all its MPPP documents?
- A. The companies are responsible for the data on each Application Form, in keeping with its normal practices. Although some of the data beyond that required does not have to be reported, the companies are still responsible for it. The WYO companies may use their normal business practices in determining which form they will use to retain data, forms or other required information.
20. Q. Who initiates the letter notification process required by the MPPP?
- A. The letter notification process is one of the requirements of the MPPP. The FIA requires any WYO company that wishes to participate in the MPPP to agree to comply with all those requirements. However, lenders/servicers differ on how their force placed hazard insurance notices are sent to their borrowers. Some lenders insist on sending such notices directly. Others let the insurance company, with whom the force placed policies are written, send out the notices. Since the MPPP is a part of the NFIP, then any policies written through the MPPP must have been written in compliance with all of its requirements, regardless of the entity that actually sends the notices.

21. Q. Must the lender or WYO company maintain copies of the notification letters?
- A. The WYO company is responsible for assuring that the letters are sent regardless of whether they or the lender actually sends them. The WYO company must maintain some form of evidence that the letters are being sent. It will be the WYO company's decision as to the form the evidence takes, such as paper copies, micro fiche, computer images or a record of the mortgagor addresses to whom the letters were sent with an indication as to the date when those mortgagors were notified.
22. Q. What does a WYO company do if all of the information FIA requires on the declarations (DEC) page won't fit on that page?
- A. The company may wish to include some of that information on the DEC page and some on an "endorsement." In such a case, it should indicate an endorsement number on the DEC page.
23. Q. Does a policy DEC page have to be issued each time an MPPP policy is renewed?
- A. Yes, and it must accompany the final renewal notification letter.
24. Q. When an MPPP is renewed, can the same policy number that was assigned to the original MPPP policy be used?
- A. Yes!
25. Q. Will the rating credits that will be available in a community participating in the Community Rating System (CRS) apply to a policy written under the MPPP?
- A. No!
26. Q. The MPPP requirements call for the full map panel number and date to be obtained. What does the WYO company do with that information since the NFIP Application Form in use today doesn't contain enough space to even capture all this information?

- A. The WYO companies have never been required to use NFIP forms in the WYO program, but have been free to develop their own forms. They are, however, responsible for all required data, some of which must be reported and some of which isn't, but must be kept in the company files. The data requirements for the MPPP follow the same conditions. The full map panel number for that panel used to determine flood zone location and rate the policy is the one that must be captured and maintained. The majority of the maps FIA has published for many years have the ten digit number, suffix and date for each panel. Some of the maps still in use have only the six digit community number and date. The six digit community number cannot be used when the ten digit number exists.
27. Q. Is contents coverage under the MPPP optional?
- A. Yes! The lender must decide whether or not it will require it as part of the MPPP policy.
28. Q. What is meant by the term "coverage limitations" that is mentioned in the MPPP materials?
- A. Primarily Actual Cash Value coverage instead of Replacement Cost coverage, when appropriate. It could also apply, however, to the situation where only an amount to cover the loan balance is purchased which may be insufficient to cover the full insurable value of the property. The WYO company will have to determine what limitations may apply depending on the decisions of the lender/servicer as to how it wants to use the MPPP and the amount of underwriting information obtained.
29. Q. The notification process contains standards for the letters being mailed and the MPPP policy being written such as 45, 30, and 15 days. Must these standards be strictly adhered to?
- A. There are a number of standards similar to this in the NFIP and some limited flexibility has been built into the actual implementation process through the underwriting review process that FIA uses with the companies. FIA is preparing modifications of that review process to incorporate the MPPP criteria and will attempt to incorporate such flexibility into these changes.
30. Q. May WYO companies, under the requirements of the MPPP, use any portion of the MPPP fee they retain, for any purpose other than as a commission to an insurance agent or agency for their writing the policy, such as for flood zone determinations or the tracking of loans?
- A. No!

**The National Flood Insurance Program's Mortgage Portfolio Protection Program  
Implementation Package  
Addendum #5**

**Receipt for Materials and Agreement to Adhere to Criteria and Requirements**

The Federal Insurance Administration (FIA) has published a package of materials for implementing their Mortgage Portfolio Protection Program (MPPP). This package contains the Criteria and Requirements that the insurance companies participating in FIA's MPPP through FIA's Write Your Own (WYO) program and any lending institutions and/or mortgage servicing or similar companies must adhere to when participating in the MPPP.

The Implementation Package contains the following:

- A cover letter from the FIA Administrator to the WYO companies and other users of the MPPP.
- A Guide for WYO Companies, Lending Institutions, Mortgage Servicers and Other Potential Users
- Addendum #1-Initial Portfolio Review Letter Notification Process
- Addendum #2-Portfolio Review Renewal Letter Notification Process
- Addendum #3-Portfolio Considerations Q & A
- Addendum #4-MPPP Q & A
- Addendum #5-Receipt for Materials and Agreement to Adhere to Criteria and Requirements (this document)

This "Receipt and Agreement," together with the Package referenced above, must be presented by any WYO company that offers the MPPP to a lender/servicer; and the lender/servicer that agrees to participate in the MPPP to assist in bringing its portfolio into compliance with flood insurance requirements must sign this "Receipt and Agreement" as evidence of having actually received the Package and agreeing to comply with the criteria and requirements contained therein.

## **Mandatory Purchase of Flood Insurance Guidelines**

---

This acknowledges that the package of implementation materials for the Federal Insurance Administration's (FIA) Mortgage Portfolio Protection Program (MPPP) has been received.

\_\_\_\_\_  
(Name of WYO company representative  
providing the Package)

\_\_\_\_\_  
(Name of lender/mortgage servicer's  
representative receiving the Package)

\_\_\_\_\_  
(Name of WYO company being  
represented)

\_\_\_\_\_  
(Name of lender/mortgage servicer  
being represented)

\_\_\_\_\_  
(Date of receipt)

\_\_\_\_\_  
(Date of receipt)

Note: WYO companies are required to keep a copy of this Receipt in their files for each lender/mortgage servicer to which they provide services under the MPPP. Lenders/mortgage servicers may wish to do the same.

**FEDERAL EMERGENCY MANAGEMENT AGENCY  
FEDERAL INSURANCE ADMINISTRATION**

**AGREEMENT TO ADHERE TO THE REQUIREMENTS OF THE MORTGAGE  
PORTFOLIO PROTECTION PROGRAM, 1995-1996**

On June 14, 1995, the Offer by the Federal Emergency Management Agency to enter into a Financial Assistance/Subsidy Arrangement (hereafter the Arrangement) was published. As an option, companies entering into the Arrangement (Write Your Own companies) may elect to participate in the Mortgage Portfolio Protection Program ("MPPP") of the National Flood Insurance Program. In order to participate in the MPPP, the Write Your Own company must agree to adhere to the "Mortgage Portfolio Protection Program Write Your Own Company Guidelines and Requirements (May 1, 1991, as amended)". This form is to indicate and provide evidence of the company's agreement.

Please complete the section below for the individual in your organization designated as the contact person for MPPP services and questions.

MPPP Contact: Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Insofar as the Arrangement and this Agreement to Adhere...may be applicable to several companies within a Company Group, each company participating in the Mortgage Portfolio Protection Program must be individually named below;

\_\_\_\_\_ (company name)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged: \_\_\_\_\_

Federal Administrator

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.



**NATIONAL FLOOD INSURANCE PROGRAM (NFIP)  
POLICY ISSUANCE 6-96**

**Subject:** Coverage for Cooperatives and Timeshares

**Background:**

There have been a number of questions over the past year concerning the coverage provided by the NFIP for cooperative and timeshare buildings, specifically, whether they are considered as being residential or non-residential, and whether they are eligible for coverage under the Residential Condominium Building Association Policy (RCBAP).

An owner in a cooperative building does not receive a real estate interest in a unit, but rather a share of stock in a corporation with the right to occupy a particular unit.

Timeshare buildings basically fall into two categories: those where a real estate ownership interest has been conveyed, and those where just the right to the use of a unit has been conveyed.

**Policy Statement:**

Cooperative buildings where at least 75% of the area of the building is used for residential purposes are considered as residential occupancies under the NFIP, and can be insured for a maximum building coverage of \$250,000 in a Regular Program community. Since they are not in the condominium form of ownership, they cannot be insured under the RCBAP. They must be insured under the General Property Policy (GPP).

Timeshare buildings not in the condominium form of ownership where at least 75% of the area of the building is used for residential purposes are considered as

## **Mandatory Purchase of Flood Insurance Guidelines**

---

residential occupancies under the NFIP, and can be insured under the GPP for a maximum building coverage of \$250,000 in a Regular Program community.

Timeshare buildings in the condominium form of ownership are eligible for coverage under the RCBAP. These buildings are subject to the same eligibility, rating, and coverage requirements as other condominiums including the requirement that 75% of the area of the building be used for residential purposes.

---

August 8, 1996  
DATE

---

/s/ Spence W. Perry  
Spence W. Perry  
Acting Deputy Administrator  
Federal Insurance Administration

# **Federal Emergency Management Agency**

---

**Federal Emergency Management Agency  
Washington D.C. 20472  
August 16, 1995**

## **ACCEPTANCE OF PRIVATE FLOOD INSURANCE POLICIES TO MEET STATUTORY REQUIREMENT AND THE ACCEPTANCE OF NFIP "WRITE YOUR OWN POLICIES"**

To give the public the benefits of the marketing and servicing expertise of the private insurance industry, the Federal Insurance Administration (FIA) has, since 1983, been making flood insurance available through the National Flood Insurance Program (NFIP) "Write Your Own" Program (WYO) which enables the public to purchase the same NFIP coverage from private companies that have agreed to enter into arrangements with FIA.

The coverage, eligibility, and premiums are the same on WYO policies as in the case of policies that are issued directly by the FIA through its servicing agent. The FIA has guaranteed that, in the event that any WYO company is required by State regulatory authorities to cease writing insurance and is unable to pay flood insurance claims under any WYO policy, FIA will assume all obligations for the payment of covered claims under that policy. Thus, lenders and insureds should not hesitate to accept NFIP policies written either directly by FIA or through a WYO company.

In the event of a submission of a private flood insurance policy, i.e., one that is not issued by the NFIP through FIA or a WYO company, FIA believes that the following criteria should be met for a lending institution or a Federal agency to accept it as satisfying the insurance purchase requirement of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994:

- (a) The insurer should be licensed to do business in the jurisdiction where the property is located, by the Insurance Department of that jurisdiction, except as indicated in (b) below.
- (b) In the case of a non-residential commercial property insured pursuant to a policy of difference in conditions, multiple peril, all risk, or other blanket coverage, it should be sufficient if the insurer is recognized, or not disapproved, as a surplus lines insurer by the Insurance Department of the jurisdiction where the property is located.

## **Mandatory Purchase of Flood Insurance Guidelines**

---

- (c) The flood insurance policy issued by the insurer should guarantee that the flood insurance coverage, considering both deductibles and exclusions or conditions offered by the insurer, is at least as broad as the coverage offered by the NFIP policy.
- (d) The flood insurance policy issued by the insurer should be as restrictive in its cancellation provisions as the NFIP which restricts cancellation of a policy to only a very few limited conditions.
- (e) The flood insurance policy issued by the insurer should contain a mortgage interest clause similar to that contained in the NFIP policy, which provides that coverage shall continue in force for the benefit of the mortgagee (or trustee) for 30 days after written notice of cancellation.
- (f) The flood insurance policy issued by the insurer should contain a provision providing the insured with at least 12 months after mailing of notice of disallowance or partial disallowance of the claim within which to file any suit against the insurer.

In the opinion of the FIA, an insurance policy that meets all of the above criteria meets the insurance purchase requirements of Section 102 of the 1973 Act.

## **Objectives**

1. To determine whether an institution performs required flood determinations for loans secured by improved real estate or a mobile home affixed to a permanent foundation in accordance with the final rule.
2. To determine if the institution requires flood insurance in the correct amount when it makes, increases, extends, or renews a loan secured by improved real estate or a mobile home located or to be located in a SFHA.
3. To determine if the institution provides the required notices to the borrower, servicer and to the Director of FEMA whenever flood insurance is required as a condition of the loan.
4. To determine if the institution requires flood insurance premiums to be escrowed when flood insurance is required on a residential building and other items are required to be escrowed.
5. To determine if the institution complies with the forced placement provisions if at any time during the term of a loan it determines that flood insurance on the loan is not sufficient to meet the requirements of the regulation.
6. To initiate corrective action when policies or internal controls are deficient, or when violations of law or regulation are identified.

## **Procedures**

The following procedures should be performed, as appropriate:

- by reviewing previous examinations and supervisory correspondence;
- by obtaining and reviewing the institution's policies, procedures and other pertinent information;
- by reviewing the institution's system of internal controls;
- through discussions with management; and
- by reviewing a sample of loan files.

### Coverage and Internal Control

1. Determine the method(s) used by the institution to ascertain whether improved real estate or mobile homes are or will be located in a special flood hazard area.
2. Verify that the process used accurately identifies special flood hazard areas.
3. For those special flood hazard areas identified, determine if the communities in which they are located participate in the National Flood Insurance Program (NFIP).
4. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, verify that it complies with regulatory requirements.
5. If the institution purchases servicing rights, review the contractual obligations placed on the institution as servicer by the owner of the loans to ascertain if flood insurance requirements are identified and compliance responsibilities are adequately addressed.
6. If the institution utilizes a third party to service loans, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately addressed.

### Property Determination Requirements

1. Verify that flood zone determinations are accurately prepared on the Standard Flood Hazard Determination Form (SFHDF).
2. Verify that the institution only relies on a previous determination if it is not more than seven years old, is recorded on the SFHDF and that it is not in a community that has been remapped.
3. If the institution utilizes a third party to prepare flood zone determinations, review the contractual obligations between the parties to ascertain that flood insurance requirements are identified and compliance responsibilities are adequately covered, including the extent of the third party's guarantee of work and the procedures in place to resolve disputes relating to determinations.
4. Verify that the institution retains a copy of the completed SFHDF, in either hard copy or electronic form, for as long as it owns the loan.

### **Purchase Requirements**

1. For loans that require flood insurance, determine that sufficient insurance was obtained prior to loan closing and is maintained for the life of the loan.
2. If the institution makes loans insured or guaranteed by a government agency (SBA, VA or FHA) determine how it complies with the requirement not to make these loans if the security property is in a SFHA within a non-participating community.

### **Determination Fee Requirements**

1. Determine that any fees charged to the borrower by the institution for flood zone determinations (absent some other authority such as contract language) are charged only when a loan:
  - is made, increased, renewed or extended;
  - is made in response to a remapping by FEMA; or
  - results in the purchase of flood insurance under the forced placement provisions.
2. If other authority permits the institution to charge fees for determinations in situations other than the ones listed above, determine if the institution is consistent in this practice.
3. Determine the reasonableness of any fees charged to a borrower for flood determinations by evaluating the method used by the institution to determine the amount of the charge. Consider, for example, the relationship of the fees charged to the cost of services provided.

### **Notice Requirements**

1. Ascertain that written notice is mailed or delivered to the borrower within a reasonable time prior to loan closing.
2. Verify that the notice contains:
  - a warning that the property securing the loan is or will be located in a SFHA;
  - a description of the flood insurance purchase requirements;
  - a statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers, if applicable; and

- a statement whether Federal disaster relief assistance may be available in the event of damage to the property caused by flooding in a Federally declared disaster, if applicable.
3. If the seller or lessor provided the notice to the purchaser or lessee, verify that the institution obtained satisfactory written assurance that the notice was provided within a reasonable time before the completion of the sale or lease transaction.
  4. Verify that the institution retains a record of receipt of the notice provided to the borrower for as long as it owns the loan.
  5. If applicable, verify that the institution provided written notice to the servicer of the loan within the prescribed time frames and that the institution retains a record of receipt of the notice for as long as it owns the loan.
  6. If the institution transfers servicing of loans to another servicer, ascertain whether it provides notice of the new servicer's identity to the flood insurance carrier (Director of FEMA's designee) within prescribed time frames.

### **Escrow Requirements**

1. If the institution's policies or loan documents require the escrow of funds to cover charges such as taxes, premiums for hazard insurance or other fees, verify that the institution requires the escrow of funds for loans secured by residential improved real estate to cover premiums and other charges associated with flood insurance.
2. For loans closed after October 1, 1996, where flood insurance is required and where the loan is subject to RESPA, verify that the institution's escrow procedures comply with Section 10 of RESPA.

### **Forced Placement Requirements**

1. If the institution determines that flood insurance coverage is less than the amount required by the FDPA, ascertain that it has appropriate policies and procedures in place to exercise its forced placement authority.
2. If the institution is required to force place insurance, verify:
  - that it provides written notice to the borrower that flood insurance is required, and that if the required insurance is not purchased by the borrower within 45 days from the time that the institution provides the written notice, that the institution purchases the required insurance on the borrower's behalf.



**FDPA**

**Examination Checklist**

---

The following questions are designed to be used in conjunction with the Examination Procedures to guide the examiner in a comprehensive review of the requirements of the regulation as it is applied to depository institutions.

**Coverage**

1. Does the institution offer or extend credit (consumer or commercial) that is secured by improved real estate or mobile homes as defined in the regulation? If yes, complete the remainder of this checklist.
2. If the institution provides "table funding" to close loans originated by mortgage brokers or dealers, does it have procedures to ensure that the requirements of the regulation are followed?
3. If the institution purchases servicing rights to loans covered by the regulation, do the documents between the parties specify the contractual obligations on the institution with respect to flood insurance compliance?
4. If the institution utilizes third parties to service loans covered by the regulation, do the contractual documents between the parties meet the requirements of the regulation?

**Property Determination**

1. If the institution utilizes a third-party to prepare flood zone determinations, do the contractual documents between the parties:
  - provide for the third-party's guarantee of work?
  - contain provisions to resolve disputes relating to determinations, to allocate responsibility for compliance, and to address which party will be responsible for penalties incurred for noncompliance?
2. Are the determinations prepared on the Standard Flood Hazard Determination Form developed and authorized by FEMA?
  - If the form is maintained in an electronic format does it contain the elements required by FEMA?
3. Does the institution maintain a record of the Form either in hard copy or electronic form for as long as it owns the loan?

4. Does the institution rely on a prior determination only if it is made on the SFHDF, is no more than seven years old and the community has not been remapped?

### Determination Fees

1. Absent some other authority (such as contract language) does the institution charge a fee to the borrower for a flood determination only when:
  - it is made when a loan is made, increased, renewed or extended, or
  - it is made in response to a remapping by FEMA, or
  - it results in the purchase of flood insurance under the forced placement provisions?
2. If the institution has other authority to charge fees for determinations in situations other than those noted above, is the practice followed consistently?
3. If the institution requires the borrower to obtain life-of-loan monitoring and passes that charge along to the borrower:
  - does it either break out the original determination charge from the charge for life-of-loan monitoring or include the full amount of the charge as a finance charge for those loans subject to TILA?
4. Are the fees charged by the institution for making a flood determination reasonable?

### Notice Requirements

1. Are borrowers whose security property is located in a Special Flood Hazard Area (SFHA) provided written notice within a reasonable time prior to loan closing?
  2. Does the notice contain the following required information?
    - a warning that the building or mobile home is located in a SFHA;
    - a description of the flood insurance requirements;
    - a statement that flood insurance is available under the NFIP and is also available from private insurers; and
    - a statement whether federal disaster relief assistance may be available in the event of damage to a building or mobile home caused by flooding in a Federally-declared disaster.
-

## **Federal Emergency Management Agency**

---

3. If the institution uses the alternate notice procedures in certain instances as permitted by the regulation, does it obtain the required satisfactory written assurance from the seller or lessor?
4. Does the institution provide a copy of the borrower notification to the servicer of the loan within the required time frames?
5. Does the institution retain a record of receipt of the notifications provided to the borrower and the servicer for as long as it owns the loan?

### **Insurance Requirements**

1. If an improved property or mobile home is located in a SFHA and flood insurance is required, does the institution have the borrower obtain a policy, with the institution as loss payee, in the correct amount prior to closing?
2. Where multiple properties securing the loan are located in SFHAs, does the institution have sufficient insurance either through a single policy with a scheduled list of several buildings or multiple policies, to meet the minimum requirements of the regulation? (See narrative for description of minimum requirements)

### **Escrow Requirements**

1. Does the institution have policies requiring escrows for property taxes, hazard insurance or other fees on residential buildings?
  - If yes, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996?
2. If the institution has no specific policies regarding escrows do its loan documents permit the institution to escrow for the above items?
  - If yes, does the institution escrow premiums for flood insurance on those loans closed on or after October 1, 1996?
3. On loans closed on or after October 1, 1996, that are subject to RESPA and where flood insurance is required, does the institution comply with the provisions of §10 of RESPA (Section 3500.17 of Regulation X) for those escrows?

### **Forced Placement Requirements**

1. If at any time during the life of the loan, the institution determines that property securing a designated loan lacks adequate flood insurance coverage:

## **Mandatory Purchase of Flood Insurance Guidelines**

---

- Does the institution provide written notice to the borrower stating that the necessary coverage must be obtained within 45 days of the notice or the institution will purchase it on the borrower's behalf?
- Does the institution purchase the coverage on the borrower's behalf if the borrower does not obtain the required policy within the required time period?

### **Notice to Director of FEMA**

1. Does the institution provide the appropriate notice to the carrier of the insurance policy (the Director of FEMA's designee) regarding the identity of the servicer of a designated loan?
2. If the institution sells or transfers the servicing of designated loans to another party, does it have procedures in place to provide the appropriate notice to the Director's designee within 60 days of the effective date of the transfer of the servicing?

**Examiner Comments and Observations:** \_\_\_\_\_

---

---

---